GUIDE TO REGULATORY COMPLIANCE FOR IMPLEMENTING CALFED ACTIONS

Volume 2: Environmental Regulatory Processes

June 2001

Disclaimer: This guide is intended to provide accurate and current information on federal and California regulations most pertinent to projects implementing CALFED's long-term plan. The discussions of regulations are necessarily general and do not cover all exceptions and variations to general rules. In some cases, common language is used rather than precise legal language to improve understandability. This publication should not be relied on for legal guidance; consultation with legal counsel may be required to address specific regulatory situations. Ultimate authorities on environmental compliance issues are the regulatory agencies and not the information provided in this guide.

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LIST OF ACRONYMS AND ABBREVIATIONS

AB	Assembly Bill
ACHP	Advisory Council on Historic Preservation
af	acre-feet
APCD	air pollution control district
APCO	air pollution control officer
APE	area of potential effects
AQMD	air quality management district
ARB	California Air Resources Board
ASIP	action specific implementation plan
ATC	authority to construct
BCDC	San Francisco Bay Conservation and Development Commission
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BMP	best management practice
CalEPA	California Environmental Protection Agency
CALFED	CALFED Bay-Delta Program
Caltrans	California Department of Transportation
CCC	California Coastal Commission
CDC	California Department of Conservation
CEQ	Council on Environmental Quality
CEQA	California Environmental Quality Act
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CESA	California Endangered Species Act
Conservation Agreement	Conservation Agreement Regarding the Multi-Species Conservation Strategy
CUPA	certified unified program agency
CWA	Clean Water Act
CWSRA	California Wild and Scenic Rivers Act
CZMA	Coastal Zone Management Act
CZMP	coastal zone management program
DFG	California Department of Fish and Game
DHS	California Department of Health Services
DSOD	Division of Safety of Dams
DTSC	Department of Toxic Substances Control
DWR	California Department of Water Resources

EA	environmental assessment
EIR	environmental impact report
EIS	environmental impact statement
EPA	U.S. Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
ERP	Ecosystem Restoration Program
EWA	Environmental Water Account
EWA Agreement	Environmental Water Account Operating Principles Agreement
FESA	federal Endangered Species Act
FONSI	finding of no significant impact
FPPA	Farmland Protection Policy Act
HCP	habitat conservation plan
HWCL	Hazardous Waste Control Law
LCP	local coastal program
LESA	Land Evaluation and Site Assessment System
MOA	memorandum of agreement
MOU	memorandum of understanding
MSCS	Multi-Species Conservation Strategy
NCCP	natural community conservation plan
NCCPA	Natural Community Conservation Planning Act
NCCPA Program Approval	California Department of Fish and Game Approval and Supporting Findings for the CALFED Bay Delta Program Multiple Species Conservation Strategy
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOD	notice of determination
NOP	notice of preparation
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NWP	nationwide permit
NWSRA	National Wild and Scenic Rivers Act
NWSRS	National Wild and Scenic Rivers System
OES	Governor's Office of Emergency Services
OPR	Governor's Office of Planning and Research
OSHA	Occupational Health and Safety Act

PCBs	polychlorinated biphenyls
PCN	preconstruction notification
PEER	Permit Engineering Evaluation Report
PEIS/EIR	CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report
PPA	Preferred Program Alternative
PTO	permit to operate
RCRA	Resource Conservation and Recovery Act of
Reclamation Board	California State Reclamation Board
RGP	regional general permit
ROD	record of decision
ROW	right-of-way
ROWD	report of waste discharge
RWQCB	regional water quality control board
SB	Senate Bill
SCH	State Clearinghouse
SHPO	State Historic Preservation Officer
SLC	State Lands Commission
SMARA	Surface Mining and Reclamation Act of 1975, as amended
SR	Study River
SWPPP	stormwater pollution prevention plan
SWRCB	State Water Resources Control Board
Unified Program	unified hazardous waste and hazardous materials management regulatory program
USACE	U.S. Army Corps of Engineers
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
WDID	waste discharge identification
WDR	waste discharge requirement
WSR	Wild and Scenic River

CHAPTER 1. USING VOLUME 2 AS PART OF AN EFFECTIVE COMPLIANCE PROCESS

The *Guide to Regulatory Compliance for Implementing CALFED Actions* is designed to provide both general and specific recommendations to assist project proponents in complying with the environmental laws and regulations that may apply to individual CALFED actions. Volume 1 provides general recommendations for developing a compliance strategy; Volume 2 complements Volume 1 by describing the specific permits and approvals that may be needed for individual projects, and the steps involved in compliance. Project proponents should follow the guidance in Volume 1 through project planning and implementation, and should refer to Volume 2 for information on specific permitting and authorization processes that apply to their projects and for recommendations on facilitating compliance with those processes.

The following is the organization of the guide.

Volume 1. Volume 1 provides the following information:

- **Chapter 1, "Introduction"**—Provides an overview of CALFED, guide objectives, organization of the guide, and recommendations for using the guide.

- **Chapter 2, "Environmental Compliance Commitments Outlined in the CALFED Bay-Delta Program Programmatic Record of Decision"**—Discusses the need for individual projects to recognize and comply with environmental compliance commitments made in the Programmatic Record of Decision. This chapter lists the environmental compliance commitments. Attachments to Chapter 2 provide information about how to meet the commitments and how to document that the commitments have been met.

- **Chapter 3, "Developing an Environmental Compliance Strategy including Integrating Permitting into the NEPA/CEQA Compliance Process"**—Describes a general strategy for completing the environmental compliance requirements for implementing CALFED Plan actions. An important component of the strategy recommended by the CALFED agencies is how project proponents can integrate compliance with other environmental laws and regulations into the steps of NEPA and CEQA compliance. This chapter includes a section on this topic.

Volume 2. Following this chapter, Volume 2 consists of the following:

- **Chapter 2, "Environmental Regulations and Permits"**—Describes specific regulatory processes, the requirements for each, and recommendations for facilitating compliance with each process. Where applicable, each section includes an overview of a regulation and information that answers the following questions:

- Who needs to comply?
- How long does the approval process take?
- What information does the applicant need to provide?
- What is the fee?
- What does the application and evaluation process entail?
- Does this process trigger the need for compliance with other regulations?
- What are the opportunities for facilitating compliance with this process?

The information provided to answer the last question includes identification of any related programmatic-level compliance completed by CALFED, and descriptions of how to take advantage of this programmatic compliance on specific projects.

- **Chapter 3, "Agency Contacts"**—Lists web addresses, postal and street addresses, and telephone numbers of regional and local offices of the federal and State agencies and air districts that could have jurisdiction over regulatory compliance for CALFED actions.

- **Chapter 4, "Other Sources of Information"**—Lists other publications with detailed information on regulatory processes.

- **Chapter 5, "Glossary"**—Defines terms used in the regulations described in Chapter 2.

- **Appendices**—Include background material on regulations described in Chapter 2 and samples of permit applications and agency approvals and permits.

CHAPTER 2. ENVIRONMENTAL REGULATIONS AND PERMITS

This chapter describes specific regulatory processes that may apply to individual CALFED actions or groups of actions, the requirements for each, and recommendations for facilitating compliance. The chapter is divided into the following major sections:

- "National Environmental Policy Act and California Environmental Quality Act";
- "Federal Endangered Species Act, California Endangered Species Act, and Natural Community Conservation Planning Act";
- "Other Federal Laws and Regulations";
- "Other State Laws and Regulations";
- "Local Regulatory Compliance"; and
- "Compliance with Hazardous Material Laws and Regulations".

The project proponents for most actions implementing the CALFED Preferred Program Alternative presumably will be federal, State, and local agencies, which will be required to obtain the environmental clearances outlined in these recommendations. However, some of the actions may be implemented by nonpublic entities. Nonpublic entities may implement some CALFED actions under the direction of a public agency. For these entities, the requirements to comply with State and federal environmental laws and regulations may be defined differently by each public agency. Applicants in this situation should consult CALFED or the appropriate public agency for guidance.

The applicability of some State laws to federal agencies is not clear. While some federal agencies claim exemption from State laws, others comply voluntarily. However, federal laws administered by the State (such as Clean Water Act Section 401 and the Coastal Zone Management Act) do apply to all federal agencies.

NATIONAL ENVIRONMENTAL POLICY ACT AND CALIFORNIA ENVIRONMENTAL QUALITY ACT

NATIONAL ENVIRONMENTAL POLICY ACT

OVERVIEW

NEPA, signed into law in 1970, is the country's basic national charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy. NEPA is a process (not a permit) that requires federal agencies to evaluate and disclose the environmental effects of their proposed actions. This requirement allows the public to review these effects and helps agencies assess the alternatives to and consequences of proposed actions.

The stated purposes of NEPA are to:

- declare a national policy that will encourage productive and enjoyable harmony between people and the environment,
- promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate health and welfare,
- enrich the understanding of the ecological system and natural resources important to the nation, and
- establish a Council on Environmental Quality (CEQ).

Depending on the potential impacts of a proposed project, the environmental information for compliance with NEPA is presented in one of three documents: a categorical exclusion or other exemption, an environmental assessment (EA) supporting a finding of no significant impact (FONSI), or an environmental impact statement (EIS). The most important steps in the NEPA process are shown in Figure 1.

ADMINISTRATION AND OVERSIGHT

The CEQ was created to develop environmental policy and oversee federal agencies' implementation of NEPA. The CEQ is responsible for:

- issuing regulations and other guidance regarding NEPA,
- resolving lead agency disputes,
- mediating interagency disputes over environmental policy, and
- training and advising federal agencies on NEPA compliance.

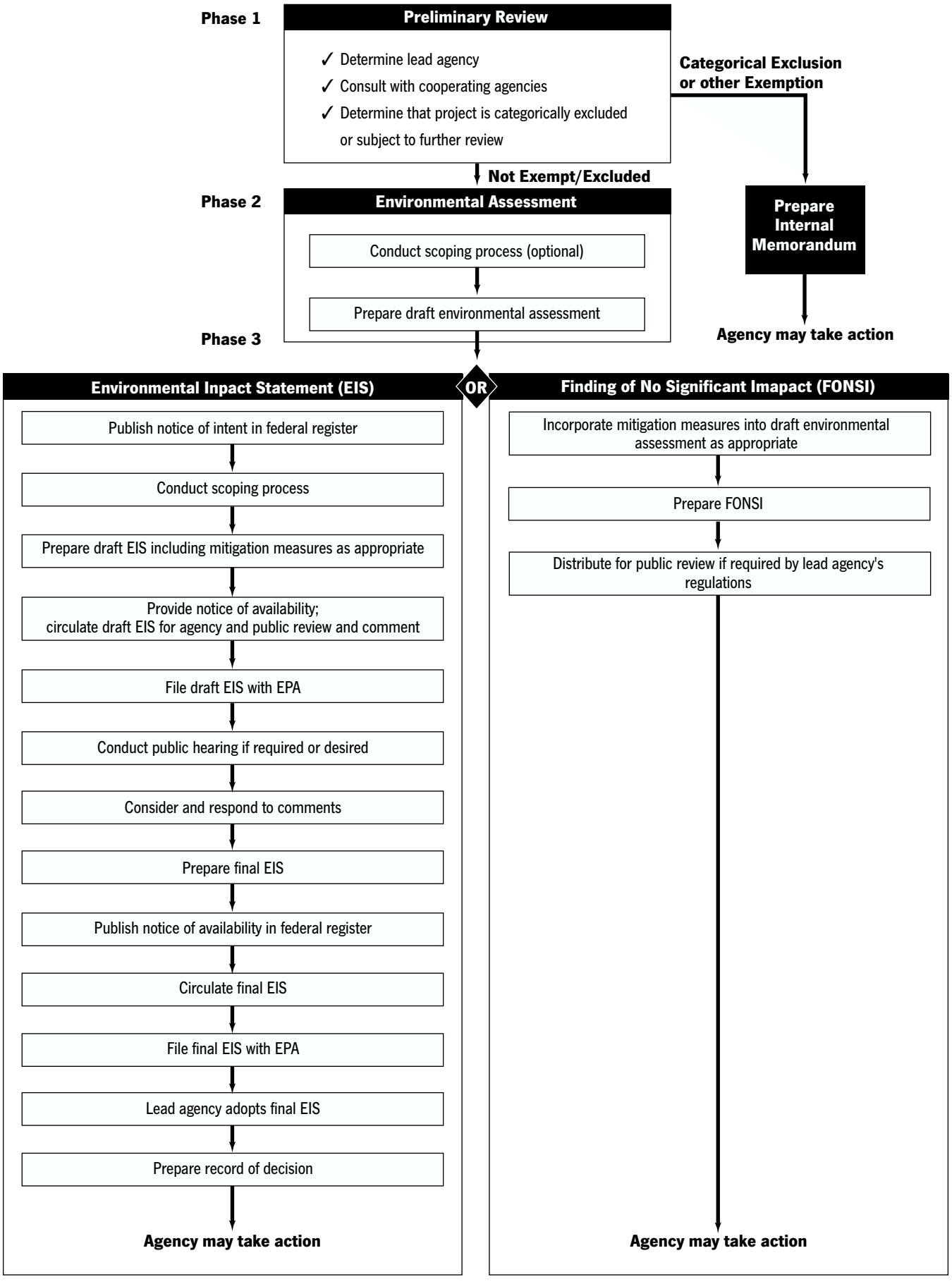


Figure 1
NEPA Process Overview

WHO NEEDS TO COMPLY?

NEPA requires that a federal agency assess the effects of a proposed action on the human environment. This requirement applies to actions that the federal agency would:

- undertake directly,
- approve by issuing a permit or other authorization, or
- fund wholly or in part.

State or private actions may therefore be considered federal agency actions under NEPA if they are funded, financed, aided, controlled, permitted, licensed, enabled, caused, or approved by the federal government.

It is likely that most CALFED actions will be considered federal agency proposals that must comply with NEPA. CALFED actions will not require NEPA compliance if they are undertaken by a nonfederal project proponent and no federal agency issues a permit or entitlement or funds any portion of the project. As discussed below, environmental analysis under CEQA may be required for actions not subject to NEPA.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The CEQ NEPA regulations do not prescribe universal time limits for completing NEPA review; each federal agency is encouraged to set time limits for completing the entire NEPA process. The CEQ NEPA regulations do contain certain interim time periods, such as minimum requirements for public notice and review, that must be factored into any overall time limits that an agency adopts. Additionally, an agency must set time limits if an applicant for a proposed action requests them. The following are typical time frames for completing NEPA processes:

- EA, 3–6 months, and
- EIS, 9 months–several years.

If an EIS is addressing large and complex issues, however, the NEPA process may take up to 3–5 years.

WHAT DOES THE NEPA PROCESS ENTAIL?

Most federal agencies have prepared guidelines that provide more detail than the CEQ NEPA regulations about agency compliance with NEPA. The lead federal agency should consult its guidelines before it undertakes NEPA compliance. The following is an overview of the steps involved in NEPA compliance.

LEAD AND COOPERATING AGENCIES. First, the lead and cooperating agencies must be determined. The lead agency is the federal agency with primary responsibility for NEPA compliance. If more than one federal agency is involved, the lead agency is typically determined according to:

- magnitude of involvement,
- authority to approve or deny approval to the proposed action,
- expertise with regard to environmental effects, and
- duration and sequence of involvement.

Typically, only one federal agency is designated as the lead agency for NEPA compliance purposes. This agency is responsible for preparing the environmental documentation for the proposed action.

Other interested federal, State, and local agencies (including those with discretionary authority over some aspect of the proposed action), or Indian tribes, may be considered "cooperating" agencies. NEPA requires cooperating agencies with discretionary authority over the proposed action to be involved in preparing the NEPA document.

DETERMINING THE TYPE OF NEPA COMPLIANCE REQUIRED. Generally, there are three additional phases for implementation of NEPA. During the first phase, the lead agency must determine whether NEPA applies to the proposed action by deciding whether the action is "categorically excluded" or otherwise exempt from NEPA. If the action is not categorically excluded or exempt, the lead agency must determine during the next phase whether the proposed action may "significantly affect the quality of the human environment". This generally involves preparing an EA to determine whether the proposed action would result in any significant environmental effects. However, an agency may bypass the preparation of an EA for certain projects that normally require an EIS.

During the third phase of the NEPA process, the federal agency prepares either a FONSI or an EIS. A FONSI is prepared if the agency determines that no significant effects would occur as a result of the proposed action; an EIS is prepared if the agency determines that the proposed action may have significant effects on the quality of the human environment. The NEPA compliance document may be prepared by lead agency staff members or by a contractor (consultant selected by the lead agency). A cooperating agency may also participate in the preparation of the document at the request of the lead agency. The lead agency, however, is ultimately responsible for the scope, contents, and legal adequacy of the document. The following discussions provide additional details about these documents.

CATEGORICAL EXCLUSION. For many actions, federal lead agencies can comply with NEPA by using a categorical exclusion. Categorical exclusions are classes of actions that have been determined by a federal agency within its specific NEPA regulations not to have significant individual or cumulative effects on the human environment. At the outset of project planning, the NEPA lead agency should determine whether an action falls within its list of categorical exclusions (sometimes known as "CEs", "CXs", or "CATEXs").

If the action qualifies for a categorical exclusion, the lead agency is not required to prepare a detailed environmental review (an EA and either a FONSI or an EIS) for NEPA compliance. The lead agency should consider preparing written documentation that discusses the appropriateness of the particular categorical exclusion and the reasons that exceptions are not involved.

Types of projects that typically receive categorical exclusions include:

- research, inventory, and information collection activities;
- renovations and replacements of existing facilities;
- construction of small structures or improvements; and
- consultation and technical assistance.

Exceptions (sometimes referred to as "extraordinary circumstances") can sometimes preclude the use of a categorical exclusion. If the action triggers one of these exceptions, the categorical exclusion does not apply and the lead agency may be required to prepare an EA and a FONSI or EIS. Typical exceptions include projects that:

- may have adverse environmental effects on unique geographic characteristics, such as:
  - historical or cultural resources;
  - park, recreation, or refuge lands;
  - wilderness areas;
  - wild and scenic rivers;
  - sole or principal drinking water aquifers;
  - prime farmlands;
  - wetlands;
  - floodplains; or
  - ecologically significant or critical areas;
- have adverse effects on species listed or proposed for listing as threatened or endangered under the federal Endangered Species Act (FESA), or that have an adverse effect on designated critical habitat;
- establish a precedent for future action with potentially significant environmental effects; or
- may be directly related to other actions with individually insignificant but cumulatively significant environmental effects.

ENVIRONMENTAL ASSESSMENT. If a proposed action is subject to NEPA and no categorical exclusion is appropriate, the lead agency may prepare an EA to determine whether the specific action could cause significant environmental effects. An EA is a concise public document that a lead agency prepares when it does not know whether impacts would be significant. The EA analysis leads to the preparation of either a FONSI or an EIS (see below).

A lead agency may, however, bypass the preparation of an EA for certain types of proposed actions that it determines normally require an EIS.

The depth of and level of detail in the impact analysis of an EA normally should be limited to that needed by the lead agency to determine whether there would be significant environmental effects. The level of significance is based on the lead agency's judgment; scientific and factual data are used to determine whether there would be a substantial adverse change in the physical environment. Based on the results of the EA, the federal agency may determine whether it must prepare an EIS to implement the proposed action. If an EIS is not necessary, a FONSI should be prepared (see below).

MITIGATION. The lead agency should incorporate mitigation measures into the project description so that a proposed action's impacts are avoided or reduced substantially. If mitigation measures are added before the EA is issued to the public, a FONSI, or what is sometimes referred to as "mitigated FONSI", can be prepared instead of an EIS.

PUBLIC INVOLVEMENT/NOTICE OF AVAILABILITY. When preparing an EA, a federal agency must involve other federal environmental agencies, project applicants, and the public to the extent practicable. Because EAs are public environmental documents, agencies must provide notice of their availability. Each agency must follow its NEPA regulations in determining the specific public notice requirements for an EA. At a minimum, however, an agency must make the EA available to the public on request.

SCOPING. Scoping is not a requirement when an agency prepares an EA. However, scoping can be a useful tool for discovering alternatives to a proposal or significant environmental impacts that may have been overlooked.

Scoping is a public process designed to determine the scope of issues to be addressed in an EA or EIS. Scoping should occur as early as possible after a lead agency decides to prepare an EA/EIS. It should be an open process intended to obtain the views of other agencies and the public regarding the scope of the EA or EIS.

FINDING OF NO SIGNIFICANT IMPACT. If a specific action has no potential for significant environmental effects, the NEPA lead agency may prepare a FONSI. A "mitigated" FONSI is often prepared, although NEPA does not specifically authorize this type of document.

A FONSI is prepared to document that the proposed federal action would not have any substantial environmental effects. A mitigated FONSI is prepared when an EA indicates that environmental effects of a proposal are potentially significant but that, with mitigation, those effects will be reduced to less-than-significant levels. Such a FONSI incorporates mitigation into the proposed action.

The FONSI is not always distributed for public review unless the federal agency's NEPA regulations require distribution; in these instances, the public review period typically lasts 30 days.

ACTION APPROVAL; ENVIRONMENTAL COMMITMENTS; AND MONITORING. After the FONSI has been prepared and the distribution time period (optional) has elapsed, the federal

agency may approve the action. As part of the action approval, the agency may impose environmental conditions based on mitigation committed to in the EA. In addition, the agency may require the project proponent to prepare and implement a monitoring program to report on the completion and success of the environmental commitments.

ENVIRONMENTAL IMPACT STATEMENT. If a specific action is not categorically excluded or otherwise exempt from NEPA and could have a significant effect on the environment, and preparation of a FONSI is therefore not appropriate, an EIS must be prepared. The EIS preparation process consists of the following series of procedural steps to ensure that adequate analysis of environmental issues and public notification occurs.

NOTICE OF INTENT. The first formal step in preparing an EIS is publishing a notice of intent to prepare an EIS. As soon as is practical after the lead agency decides to prepare an EIS, but before the scoping process begins, the lead agency publishes a notice of intent in the Federal Register. The notice of intent describes the proposed action and alternatives, describes the proposed scoping process, and provides the name and address of a lead agency contact person.

SCOPING. Scoping should occur as early as possible after a lead agency decides to prepare an EIS. The lead agency should use scoping to obtain the views of other agencies and the public regarding the scope of the EIS. The objectives of scoping are to:

- invite other agencies to participate,
- determine scope and significant issues,
- identify and eliminate issues that are insignificant,
- allocate assignments among agencies,
- identify related environmental documents that are being prepared,
- identify other environmental review and consultation requirements,
- set page limits,
- set time limits, and
- adopt procedures to combine the environmental analysis with scoping.

DRAFT EIS. A draft EIS must be prepared in accordance with the scope decided on in the scoping process. The draft EIS must contain all the required contents specified in the CEQ NEPA regulations (see "What Information Does the Applicant Need to Provide?" below) and must disclose and discuss all major points of view on the environmental impacts of the alternatives. In the draft EIS, the lead agency makes sure to include information it has gained during scoping and during its consultation with federal, state, and local agencies that have jurisdiction or special expertise. The EIS must disclose and discuss the environmental impacts of the proposed action and a reasonable range of alternatives that meet the project purpose and need.

PUBLIC INVOLVEMENT AND NOTICE OF AVAILABILITY. The lead agency must make diligent efforts to involve the public in preparing an EIS. It must provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents to inform interested persons and agencies. Once the draft EIS is prepared, the lead agency must

distribute the document for review by other agencies and the public. If the EIS is unusually long, the summary alone may be circulated. However, the lead agency must provide the entire draft EIS to federal agencies that have jurisdiction over or expertise on the proposed action, as well as to environmental regulatory agencies, the project applicant, and persons who request copies of the full EIS.

The lead agency must obtain comments from the federal, state, and local agencies with jurisdiction over or expertise on the proposed action. Comments should also be requested from the project applicant (if different from the lead agency), agencies that ask to be notified, Native American tribes, and the public. Generally, a lead agency must allow at least 45 days for comment on a draft EIS.

FINAL EIS. After the lead agency receives and reviews comments on the draft document, it prepares a final EIS. The final EIS must contain the lead agency's responses to all comments and discuss any opposing views on substantive issues raised. The final EIS may also include a re-publication of the draft EIS that incorporates any changes required by responses to comments on the draft EIS.

The final EIS is circulated to federal agencies with jurisdiction or expertise, to environmental regulatory agencies, and to the project applicant, as well as to persons who request notification or who submitted comments. The lead agency must file the final EIS with the U.S. Environmental Protection Agency's (EPA's) Office of Federal Activities. Each week, EPA must publish a notice in the Federal Register that lists the final EISs received during the preceding week. The 30-day waiting period is measured from the date of publication in the Federal Register. The lead agency need not reply to any comments received on the final EIS.

ADOPTING THE FINAL EIS AND PREPARING A RECORD OF DECISION. When the federal lead agency determines that the EIS meets NEPA requirements, it prepares the record of decision (ROD), a written public record that explains a particular course of action. The ROD must be made available to the public through appropriate public notice. There is no specific requirement for publication of the ROD in the Federal Register or elsewhere; however, some agencies do publish their RODs in the Federal Register.

ACTION APPROVAL; ENVIRONMENTAL COMMITMENTS; AND MONITORING. After the ROD has been finalized, the federal agency may approve the action. As part of the action approval, the agency may impose environmental conditions based on the mitigation presented in the EIS. In the ROD, the agency is required to adopt a monitoring and reporting program for all mitigation adopted and made a condition of approval. At this point the project proponent would be required to implement the monitoring and reporting program to report on the completion and success of the environmental commitments adopted as mitigation.

TIERED DOCUMENTS. Agencies are encouraged to tier environmental documents to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review. Whenever a broad EIS or EA on a program has been prepared and an EIS or EA is subsequently prepared on an action included within the program, the subsequent, or "second-tier", EIS or EA need only summarize the issues discussed

in the broader EIS or EA. The second-tier EIS or EA should incorporate discussions from the broader analysis by reference and should concentrate on the issues specific to the subsequent action.

The CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR) is a broad EIS from which subsequent NEPA documents can be tiered. Volume 1, Chapter 3, provides detailed guidance on tiering from the PEIS/EIR.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

CATEGORICAL EXCLUSION. If a proposed action is described in an agency's list of categorical exclusions, neither an EA nor an EIS is required. Some agencies, however, do prepare an internal memorandum that documents the determination that a proposed action is categorically excluded from NEPA documentation.

ENVIRONMENTAL ASSESSMENT. NEPA requires that an EA:

- briefly discuss the need for the proposed action,
- offer alternatives to the proposed action,
- discuss the affected environment and the environmental effects of the proposed action and alternatives,
- list agencies and persons consulted in the preparation of the EA, and
- provide supporting technical data or appendices.

The EA must also consider cumulative impacts when determining whether an action significantly affects environmental quality. If it is reasonable to anticipate cumulatively significant impacts, an EIS must be prepared.

FINDING OF NO SIGNIFICANT IMPACT. The FONSI must:

- briefly present reasons why the specific action would not have a significant impact on the quality of the human environment (referring to, not duplicating, the information included in the EA);
- state that an EIS is not required;
- include references to related environmental documents;
- present all mitigation measures that have become part of the specific action; and
- include monitoring efforts to ensure implementation.

A copy of the EA that supports the finding should be attached to the FONSI.

ENVIRONMENTAL IMPACT STATEMENT. CEQ's NEPA regulations specify the following required contents and recommended format for an EIS:

- Cover sheet. Not exceeding one page, the cover sheet should include:
  - a list of the responsible agencies including the lead agency and any cooperating agencies;
  - the title of the proposed action that is the subject of the statement, together with the state and county where the action is located;
  - the name, address, and telephone number of the person at the agency who can supply further information;
  - a designation of the statement as a draft, final, or draft or final supplement;
  - a one-paragraph abstract of the statement; and
  - the date by which comments must be received.
- Summary. The summary should highlight the major conclusions, areas of controversy, and the issues to be resolved. The summary normally does not exceed 15 pages.
- Table of contents.
- Purpose of and need for action.
- Alternatives, including the proposed action. This section should:
  - explore and objectively evaluate all reasonable alternatives;
  - devote substantial treatment to each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits;
  - include reasonable alternatives not within the jurisdiction of the lead agency;
  - include an alternative of no action;
  - identify the agency's preferred alternative(s); and
  - include appropriate mitigation measures not already included in the proposed action or alternatives.

- Affected environment. A succinct description of the affected environment should be discussed. The descriptions should be no longer than is necessary to provide context for the discussion of the effects of the alternatives.

- Environmental consequences. The environmental consequences section of an EIS forms the scientific and analytic basis for the comparison of alternatives. The discussion of environmental consequences should describe:

  – direct and indirect effects, and their significance;

  – possible conflicts between the proposed action and the objectives of federal, tribal, regional, state, and local land use plans and policies for the area concerned;

  – the environmental effects of alternatives including the proposed action; and

  – means to mitigate adverse environmental impacts.

- List of preparers.

- List of agencies, organizations, and persons to whom copies of the statement are sent.

- Index.

- Appendices (if any).

Additionally, a final EIS must include the lead agency's responses to comments on the draft EIS.

RECORD OF DECISION. The ROD must:

- include a statement explaining the decision;

- explain alternatives that were considered and those that are environmentally preferable;

- describe factors considered by the lead agency in making the decision;

- explain which mitigation measures, if any, were adopted, and if mitigation measures were not adopted, explain why not; and

- describe the monitoring and enforcement program for any adopted mitigation measures.

WHAT IS THE FEE?

NEPA allows lead agencies to collect fees from project applicants for NEPA implementation. Each lead agency's fee for NEPA compliance will depend on the complexity of the project, the controversy surrounding the project, the resources affected, and the type of document necessary to achieve NEPA compliance.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

NEPA compliance is often triggered by applications for federal permits or other approvals; however, NEPA in itself does not trigger the need for compliance with other regulations.

Federal agencies must integrate compliance with NEPA and compliance with other environmental laws. Generally, proposed federal actions that trigger review under NEPA also require compliance with a variety of other federal and, often, state environmental laws. Each proposed federal action will trigger a different set of related environmental requirements depending on the type of activities being proposed. For example, if the action includes discharges into "waters of the United States", the applicant must also comply with Section 404 of the Clean Water Act. See Volume 1, Chapter 3, for guidance on integrating NEPA compliance and compliance with other environmental regulations.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the NEPA process for CALFED actions:

- **Consult early.** Agencies should integrate the NEPA process with other planning processes as early as possible to avoid delays later in the process, and to head off potential conflicts.

- **Conduct a scoping meeting.** Although scoping meetings are not required under NEPA, CEQ recommends that lead agencies use them to obtain input from other agencies and the public on the scope and content of an EA or EIS. The timing of the scoping meeting should be early enough to openly discuss the proposal before the resources are committed but late enough so there is something to which people can react.

- **Tier from the CALFED PEIS/EIR.** The EA or EIS should incorporate by reference the relevant information contained in the PEIS/EIR, in other programmatic documentation, and in other NEPA documents (such as information contained in an EA or EIS prepared for other proposed actions). CALFED's "Guidance for Tiering from the CALFED Final Programmatic EIS/EIR". Volume 1, Chapter 3, provides specific guidance on tiering from the PEIS/EIR. Use of this guide is strongly recommended for projects that receive funding from CALFED.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

OVERVIEW

Prompted by the passage of NEPA in 1969, CEQA was enacted in 1970 as California's counterpart to NEPA. CEQA is a statute that requires State and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. The objectives of CEQA are to:

- disclose to decision makers and the public the significant environmental effects of proposed activities;
- identify ways to avoid or reduce environmental damage;
- prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures;
- disclose to the public reasons for agency approval of projects with significant environmental effects;
- foster interagency coordination in the review of projects; and
- enhance public participation in the planning process.

Depending on the potential impacts of a proposed project, the environmental information is presented in one of three CEQA documents: a notice of exemption (optional), an initial study supporting either a negative declaration or mitigated negative declaration, or an environmental impact report (EIR).

ADMINISTRATION AND OVERSIGHT

Two State agencies, the Governor's Office of Planning and Research (OPR) and the Resources Agency, are responsible for CEQA administration. OPR is responsible for:

- reviewing and recommending changes to the CEQA Guidelines,
- recommending categorical exemptions,
- assisting in identifying responsible agencies,
- ensuring that responsible agencies respond to notices of preparation (NOPs),
- operating the State Clearinghouse (SCH),
- resolving lead agency disputes,
- posting notices of completion and determination,
- publishing the SCH newsletter,
- collecting California Department of Fish and Game (DFG) review fees,
- providing education and training on CEQA, and
- maintaining a database to assist agencies in CEQA implementation.

The Resources Agency is responsible for:

- adopting the CEQA Guidelines,
- publishing the EIR Monitor (although it has not been published in several years), and
- certifying State agency regulatory programs.

WHO NEEDS TO COMPLY?

CEQA requirements apply to certain activities of State and local public agencies. A public agency must comply with CEQA when it undertakes an activity defined by CEQA as a "project". A project is an activity undertaken by a public agency or an activity undertaken by a private entity that:

- must receive some discretionary approval from a government agency (meaning that the agency has the authority to deny the requested permit or approval), and

- may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment.

Most proposals for physical development in California are subject to CEQA provisions, as are many governmental decisions that do not immediately result in physical development (such as adoption of a general or community plan). Every development project that requires a discretionary State or local governmental approval will require at least some environmental review under CEQA, unless an exemption applies.

Projects undertaken solely by a federal agency with no State or local agency involvement need not comply with CEQA. However, it is expected that nearly all CALFED implementation actions will not be solely undertaken by a federal agency and will be considered projects under CEQA's definition, and will be subject to CEQA compliance because of State or local permitting requirements, funding, or other involvement.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The CEQA process may take 5 months or longer for projects that require an initial study supporting a negative declaration. For projects that require an EIR, the process may take 12 months or longer.

WHAT DOES THE CEQA PROCESS ENTAIL?

CEQA requires that each State and local agency adopt implementation procedures that are consistent with CEQA and the CEQA Guidelines. However, an agency may adopt the CEQA Guidelines by reference and add specific provisions tailored to the agency's operations. In practice, most State and local agencies mainly incorporate the Guidelines by reference as their procedures. The following is an overview of the steps involved in CEQA compliance.

LEAD, RESPONSIBLE, AND TRUSTEE AGENCIES. First, the lead, responsible, and trustee agencies must be determined. A lead agency is the State or local government agency with primary responsibility for carrying out or approving a project and therefore the primary responsibility for preparing CEQA documents. A lead agency is responsible for deciding whether a negative declaration or an EIR will be required.

A responsible agency is an agency other than the lead agency that also has a legal responsibility for carrying out or approving a project. A responsible agency must actively participate in the lead agency's CEQA process, review its CEQA document, and use that document when making a decision on the project.

Trustee agencies have jurisdiction over certain resources held in trust for the people of California. As designated by the CEQA Guidelines, only four agencies are designated as trustee agencies:

- DFG (with regard to fish and wildlife, rare and endangered native plants, game refuges, and ecological reserves),
- the State Lands Commission (with regard to State-owned "sovereign" lands, such as the beds of navigable waters),
- the California Department of Parks and Recreation (with regard to State park systems), and
- the University of California (with regard to the 33 sites within the Natural Land and Water Reserves System protected for scientific study; see http://nrs.ucop.edu).

Trustee agencies are generally required to be notified of CEQA documents relevant to their jurisdiction, whether or not these agencies have actual permitting authority or approval power over aspects of the underlying project.

DETERMINING THE TYPE OF CEQA COMPLIANCE REQUIRED. Generally, there are three phases for implementation of CEQA. During the first phase, the lead agency must conduct a preliminary review to determine whether the project is subject to CEQA. If the action is not exempted, the lead agency prepares an initial study during the next phase to determine whether the project may have a significant environmental effect.

During the third phase of the CEQA process, the lead agency prepares either an EIR or a negative declaration. An EIR is prepared if the agency determines that the project may have a significant environmental effect; a negative declaration is prepared if the agency determines that no significant effects will occur. The CEQA compliance document may be prepared by lead agency staff members, another public or private entity, the project applicant, or the project applicant's consultant. The lead agency, however, is ultimately responsible for the scope, contents, and legal adequacy of the document. Figure 2 presents an overview of the three phases of CEQA. The following discussions provide additional detail.

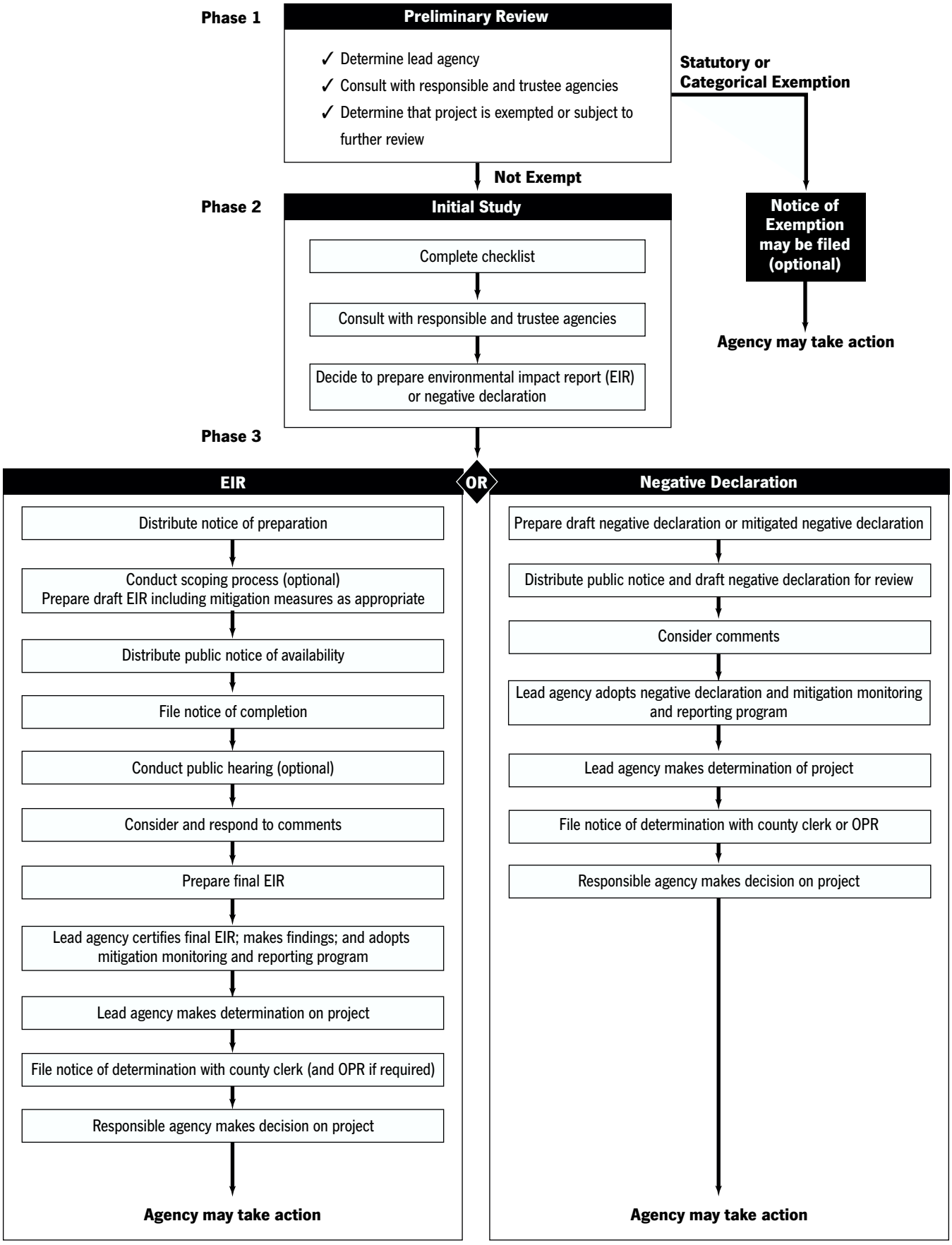


Figure 2
CEQA Process Overview

EXEMPTIONS

STATUTORY EXEMPTIONS. The California legislature has the authority to exempt activities from the jurisdiction of CEQA. The legislature has established a variety of statutory exemptions (see Appendix A). A project that is statutorily exempt is entitled to a blanket exemption from all of CEQA's procedures and policies, even if it has the potential to significantly affect the environment.

CATEGORICAL EXEMPTIONS. CEQA directs the Resources Agency to designate classes of projects that should be exempt from CEQA review. A categorical exemption is an exemption from CEQA for a class of projects that the Secretary for Resources determines generally will not have a significant effect on the environment. The Resources Agency has established 32 classes of categorical exemptions (see Appendix A). Unlike statutory exemptions, categorical exemptions are not absolute. A categorical exemption does not apply if:

- unusual circumstances create a reasonable possibility that the activity may have a significant environmental impact or considerable, and therefore significant, cumulative effects; or
- the project would:
  - occur in certain specified sensitive environments,
  - affect scenic resources within official State scenic highways,
  - be located on a hazardous waste site listed by the California Environmental Protection Agency, or
  - cause substantial adverse changes in the significance of a historical resource.

NOTICE OF EXEMPTION. When a public agency decides that a project is either statutorily or categorically exempt from CEQA and approves the project or determines to carry it out, the agency may file a notice of exemption, although it is not required to do so. If a notice of exemption is filed, it should be filed with the county clerk or OPR, depending on the public agency filing the notice. If the notice of exemption is filed and posted, a 35-day statute of limitations will commence from the date of project approval; if the notice is not filed, a 180-day statute of limitations will apply.

INITIAL STUDY. If an activity is subject to CEQA and no statutory or categorical exemptions apply, a lead agency generally prepares an initial study. An initial study is a preliminary analysis prepared by a lead agency, in consultation with other relevant agencies, to determine whether an EIR or a negative declaration is needed. (The lead agency may forgo preparing an initial study if it determines at the outset of its CEQA review that the proposed project does have the potential to significantly affect the environment and preparation of an EIR will be required.)

If an initial study concludes that the project, without mitigation, may have a significant effect on the environment, an EIR should be prepared. However, if the initial study concludes that the project **does not** have a significant effect on the environment, the lead agency may prepare a negative declaration. A mitigated negative declaration may be prepared if the lead agency determines that the effects of the project, **with mitigation**, would not have a significant effect on the environment.

In preparing an initial study, the lead agency may rely on expert opinion supported by facts, technical studies, or other substantial evidence to document its conclusions. An initial study, however, is not intended to include the level of detail typically found in EIRs.

If, after preparing the initial study, the lead agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, it must:

- prepare an EIR,
- use a previously prepared EIR that adequately analyzes the project at hand, or
- use one of CEQA's allowable tiering methods to determine which of the project's effects have already been adequately examined in an earlier EIR.

The lead agency must take action whether the overall effect of the project is adverse or beneficial.

NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION. If a proposed project has no potential for significant environmental effects, the CEQA lead agency may prepare a negative declaration. A negative declaration is a written statement, accompanied by an initial study, that briefly explains why the proposed project would not have substantial environmental effects. Preparation and review of a negative declaration are similar to, but more abbreviated than, preparation and review of an EIR. If, after preparing an initial study, the lead agency determines that the proposed project would have potentially significant environmental impacts, the lead agency may avoid preparing an EIR and may prepare a mitigated negative declaration if it develops mitigation measures to clearly mitigate significant impacts and the project proponent agrees to those measures before public review begins.

The lead agency must publish a notice of a proposed negative declaration or mitigated negative declaration. The notice must specify the review period, identify any public meetings or hearings on the project, briefly describe the project, and state where the proposed negative declaration or mitigated negative declaration and all reference documents are available for review. A copy of the notice and the proposed negative declaration or mitigated negative declaration must be mailed to responsible and trustee agencies and agencies with jurisdiction by law and to all parties previously requesting notice. The notice must be posted in the county clerk's office for 30 days. The clerk must post the notice within 24 hours of receipt.

The minimum public review period for a negative declaration or mitigated negative declaration is 20 days. When a negative declaration or mitigated negative declaration is sent to the SCH for review, the public review period must be 30 days unless the SCH approves a shorter period (not less than 20 days).

The lead agency must consider the negative declaration or mitigated negative declaration, together with any comments received, before approving the project. It must also notify any commenting agencies of the date of the public hearing on the project for which a negative declaration or mitigated negative declaration is prepared. The lead agency must adopt a mitigation and monitoring program at the time of the mitigated negative declaration's adoption. A notice of determination (NOD) for approval of a project based on a negative declaration or mitigated negative declaration must be filed with OPR (for State lead or responsible agencies) or the county clerk (for local agencies) within 5 working days after approval of a project for which a negative declaration or mitigated negative declaration has been prepared. The NOD must be posted by the county clerk within 24 hours of receipt.

ENVIRONMENTAL IMPACT REPORT. If the lead agency decides that an activity is a project, is not exempt from CEQA, and potentially causes significant effects on the environment that could not be addressed by a mitigated negative declaration, an EIR must be prepared. A lead agency should select the appropriate type of EIR based on the particular decision-making process and project. The following is a list of different types of EIRs:

- tiered EIR;
- project EIR;
- program EIR;
- general plan EIR;
- staged EIR;
- master EIR;
- focused EIR; and
- supplemental EIR.

NOTICE OF PREPARATION. Immediately after it decides that an EIR is required, the lead agency must send an NOP, which solicits participation in determining the scope of the EIR, to:

- responsible agencies,
- trustee agencies,
- involved federal agencies,
- the SCH (if a State agency is a responsible agency for the proposed action or if a trustee agency is involved), and
- parties that previously requested notice in writing.

The NOP must be posted in the county clerk's office for 30 days. The county clerk must post the notice within 24 hours of receipt.

SCOPING MEETINGS. CEQA does not require formal scoping meetings when a lead agency has decided to prepare an EIR. At the lead agency's discretion, however, scoping meetings may be held with responsible and trustee agencies, other interested agencies, and the public to obtain information about the scope and content of an EIR. Although the lead agency is required to allow 30 days from issuance of the NOP to accept comments regarding the scope of the EIR, it may start collecting the preliminary information and preparing the impact analysis for the EIR immediately after it decides to prepare an EIR. The scoping process assists the lead agency in determining the basic substantive content of the EIR. Through scoping, the lead agency should have identified the range of actions, alternatives, environmental effects, and mitigation measures to be analyzed in depth.

DRAFT EIR. Although the lead agency is required to allow for 30 days from issuance of the NOP to accept comments regarding the scope of the EIR, it may start collecting the preliminary information and preparing the impact analysis for the EIR immediately after it decides to prepare an EIR. The scoping process will help the lead agency to determine the basic substantive content of the EIR. Through scoping, the lead agency will identify the range of actions, alternatives, environmental effects, and mitigation measures to be analyzed in depth.

NOTICE OF AVAILABILITY, NOTICE OF COMPLETION, AND PUBLIC REVIEW. Once the draft EIR is prepared, the lead agency must distribute the document for review and comment. CEQA requires that the lead agency issue a public notice announcing that the draft EIR is available for review; the notice must be issued to the county clerk, all responsible and trustee agencies, and any person or organization that requests or previously requested a copy. The public notice must either be published in a newspaper of general circulation, posted on and off the project site, or directly mailed to owners and occupants of contiguous property. It must also be posted in the county clerk's office for 30 days. The clerk must post the notice within 24 hours of receiving it.

At the same time the lead agency provides public notice of the availability of a draft EIR, the lead agency must file a notice of completion with the SCH.

The minimum public review period for a draft EIR is 30 days. When a draft EIR is sent to the SCH for review, the public review period must be 45 days unless the SCH approves a shorter period (of not less than 30 days).

CEQA does not require a public hearing on the draft EIR, although in practice most agencies conduct such hearings. This type of hearing is typically held so that the lead agency can receive comments on the draft EIR; it is not a formal evidentiary hearing.

FINAL EIR. Before approving the project, the lead agency must prepare a final EIR that responds to all environmental comments received on the draft EIR and must certify the final EIR. The responses to comments on a draft EIR must include good-faith, well-reasoned

responses to all comments received on the draft EIR. The lead agency must circulate its proposed responses to commenting agencies at least 10 days before issuing the final EIR.

If "significant new information" is added to the EIR after the public comment period on the draft EIR closes but before the final EIR is certified, the lead agency must provide a second public review period and recirculate the draft EIR for comments. Recirculation of an EIR is subject to the same public notice and consultation requirements that applied to the original draft EIR. Recirculation of a draft EIR is not required where the new information merely clarifies or makes minor modifications to an adequate EIR.

CERTIFYING THE FINAL EIR, ISSUING FINDINGS AND A STATEMENT OF OVERRIDING CONSIDERATIONS, AND FILING A NOTICE OF DETERMINATION. Before it approves the project, the lead agency must certify that the final EIR was prepared in compliance with CEQA and that it was presented to the lead agency's decision-making body, which reviewed and considered the final EIR before approving the project. In addition, the lead agency must certify that the EIR reflects the independent judgment of the lead agency. At this time the lead agency must also adopt a mitigation monitoring and reporting program.

To support its decision on the project, the lead agency must prepare written findings of fact for each significant impact identified in the EIR. A finding of fact is a written statement that explains how the lead agency dealt with each significant impact and alternative in the EIR. For each significant impact, the agency must make one of the following findings:

- the project has been changed (e.g., by adoption of mitigation measures) to avoid or substantially lessen the magnitude of the impact;
- changes to the project (e.g., mitigation) are within another agency's jurisdiction; or
- specific economic, social, legal, technical, or other considerations make the proposed mitigation measure or alternative infeasible.

CEQA authorizes lead agencies to approve a project with significant effects if there is no feasible way to lessen or avoid the significant effects and the project's benefits outweigh these effects. However, when approving a project with unavoidable significant environmental effects, the lead agency must prepare a statement of overriding considerations in which it explains why the agency is willing to accept each significant effect. The statement sets forth the specific overriding social, economic, legal, technical, or other beneficial project aspects supporting the agency's decision and must be based on substantial evidence in the final EIR or elsewhere in the record.

A lead agency must file a NOD after it decides to approve a project for which an EIR is prepared. No NOD is required if the agency decides to disapprove the project. The NOD must be filed with the county clerk within 5 days of project approval. If State discretionary approval is also involved, the NOD must also be filed with the OPR. In addition, the notice must also be sent to anyone who previously requested notice. The NOD must be posted for 30 days.

TIERED DOCUMENTS. Agencies are encouraged to tier environmental documents to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review. Whenever a broad EIR has been prepared and an EIR is subsequently prepared on an action included within the program, the subsequent EIR need only summarize the issues discussed in the broader EIR. The tiered EIR should incorporate discussions from the broader statement by reference and should concentrate on the issues specific to the subsequent action.

The CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR) is a broad EIR from which subsequent CEQA documents can be tiered. Volume 1, Chapter 3, provides guidance on tiering from the PEIS/EIR.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

NOTICE OF EXEMPTION. If a project is categorically exempt and a notice of exemption is filed, the notice should include:

- a brief description of the project,
- a finding that the project is exempt,
- citations to the applicable exemption in the law or CEQA Guidelines, and
- a brief statement of reasons that support the finding of exemption.

INITIAL STUDY. CEQA requires that an initial study include:

- a description of the project and environmental setting,
- an analysis of potential environmental impacts,
- mitigation measures for any significant effects,
- a description of the proposed project's consistency with plans and policies, and
- a list of the names of the preparers of the initial study.

When describing potential environmental effects in an initial study, the lead agency may use a checklist, matrix, or other form, as long as the entries are briefly explained to indicate that evidence exists to support the entries. The brief explanation may be provided through either a narrative or a reference to another information source such as attached maps, photographs, or earlier EIRs or negative declarations.

NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION. A negative declaration must include:

- a description of the project and project location;
- the identity of the project proponent;
- a proposed finding of no significant effect;

- for mitigated negative declarations, all mitigation measures that have become part of the specific project; and

- a mitigation and monitoring program for those mitigation measures adopted or made a condition of project approval.

A copy of the initial study that supports the finding must be attached to the negative declaration.

ENVIRONMENTAL IMPACT REPORT

NOTICE OF PREPARATION. The required contents of an NOP are:

- a brief description of the proposed project;

- a description of the proposed project's location;

- the date, time, and place of the public hearing (if the lead agency decides to hold one);

- an address where documents or files relating to the proposed project are available for review;

- an address where written comments on the scope of the EIR may be sent; and

- the deadline for submitting comments.

DRAFT EIR. The required contents of a draft EIR are:

- table of contents or index;

- summary of discussion contained in the draft EIR (executive summary);

- project description;

- environmental setting;

- presentation of the significant environmental effects of the project including:

  – direct,
  – indirect,
  – short-term,
  – long-term,
  – cumulative, and
  – unavoidable impacts;

- areas of known controversy;
- alternatives to the proposed project, including the no-project alternative, and identification of the environmentally superior alternative;
- mitigation measures for the significant environmental effects;
- growth-inducing impacts; and
- significant irreversible changes expected to result from the proposed project.

FINAL EIR. The required contents of a final EIR are:

- the draft EIR or a revision of the draft EIR,
- copies or a summary of comments and recommendations received during public review of the draft EIR,
- a list of persons and entities commenting on the draft EIR, and
- lead agency responses to comments.

FINDINGS OF FACT. The findings of fact must include:

- a conclusion regarding each significant impact (see "Certifying the Final EIR, Issuing Findings and a Statement of Overriding Considerations, and Filing a Notice of Determination" above),
- substantial evidence supporting the conclusion, and
- an explanation of how the substantial evidence supports the conclusion.

STATEMENT OF OVERRIDING CONSIDERATIONS. The lead agency must prepare a statement of overriding considerations if it is approving a project with unavoidable significant effects. The statement of overriding considerations must set forth the specific overriding social, economic, legal, technical, or other beneficial project aspects supporting the agency's decision and must be based on substantial evidence in the final EIR or elsewhere in the record.

MITIGATION MONITORING AND REPORTING PLAN. The lead agency must prepare a mitigation monitoring and reporting plan for mitigation measures adopted or made condition of project approval.

NOTICE OF DETERMINATION. The NOD must:

- include the project name, description, and location, and the date of project approval;

- summarize the project's significant impacts;
- state whether mitigation measures were adopted as conditions of approval, findings were prepared, and a statement of overriding considerations was adopted;
- state that the final EIR is available for public review; and
- disclose the location where the final EIR and record of project approval is available for review.

WHAT IS THE FEE?

CEQA allows lead agencies collect fees from project applicants for CEQA implementation. Each lead agency's fee for CEQA compliance will depend on the complexity of the project, the controversy that surrounds the project, the resources affected, and the type of document necessary to achieve CEQA compliance.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance is often a requirement triggered by other permits; however, CEQA in itself does not trigger the need for compliance with other regulations.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the CEQA process for CALFED actions:

- **Start early.** EIR preparation should begin as early as possible in the planning process so that project design will reflect environmental considerations, but late enough to provide meaningful information for evaluation of environmental effects.
- **Conduct a scoping meeting.** Although formal scoping meetings are not required by CEQA, when conducted with responsible and trustee agencies they may be a useful opportunity for obtaining information about the scope and content of an EIR. As with NEPA, these meetings should be held early enough to gain input before the irretrievable commitment of resources, but late enough to allow the public to react to a definite proposal.
- **Tier from the CALFED PEIS/EIR.** The initial study or EIR should incorporate by reference the relevant information contained in the PEIS/EIR, in other programmatic documentation, and in other CEQA documents (such as information contained in an initial study or EIR prepared for other proposed actions). "Guidance for Tiering from the CALFED Final Programmatic EIS/EIR" in Volume 1, Chapter 3, provides specific guidance on tiering from the PEIS/EIR. Use of this guide is strongly recommended for projects that receive funding from CALFED.

- **Ensure that EIR discussions include any information needed to prepare CEQA findings and a statement of overriding considerations.** If an EIR is being prepared for CEQA compliance, the lead agency, when making a decision on the project, will need to prepare findings of fact for each significant impact identified, and will need to prepare a statement of overriding considerations for any impacts found to be significant and unavoidable (see "Certifying the Final EIR, Issuing Findings and a Statement of Overriding Considerations, and Filing a Notice of Determination" above). Conclusions about impact significance and mitigation requirements should be presented in an EIR in a clear and consistent manner, and the EIR should clarify which other agencies would have jurisdiction in enforcing mitigation requirements. Presenting this information clearly in the EIR facilitates preparation of the findings and statement of overriding considerations because the information can be drawn directly from the EIR.

COORDINATING COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

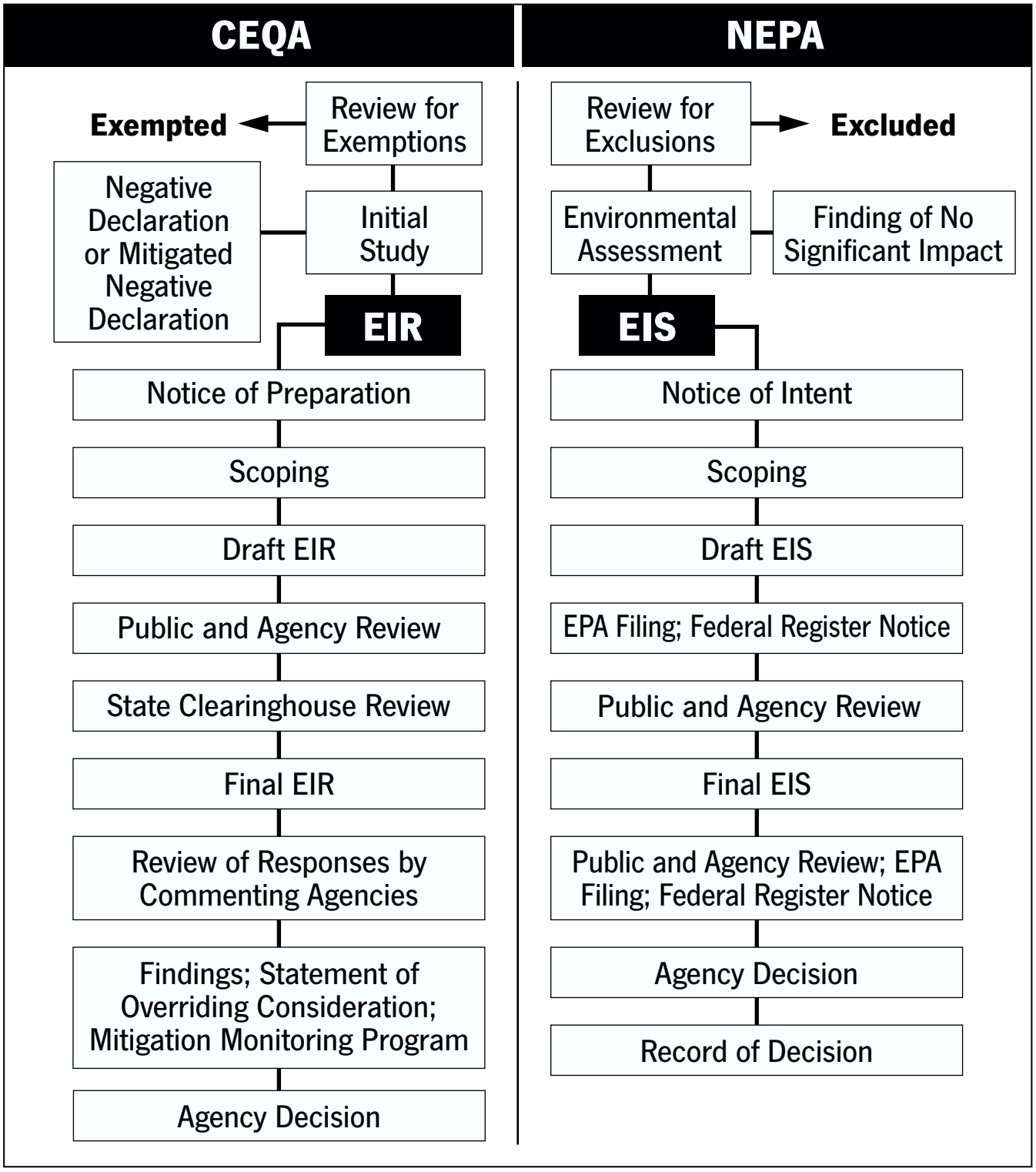
Federal, State, and local agencies are encouraged to prepare a joint EIS/EIR or FONSI/negative declaration when appropriate. NEPA and CEQA establish essentially similar processes (see Figure 3). In practice, there are several recommendations that may facilitate interaction between federal lead agencies and State and local lead agencies when joint NEPA/CEQA documents are prepared:

- **Clearly determine the lead agencies' roles.** A written memorandum of understanding (MOU) between the two lead agencies should spell out the roles and responsibilities of each agency, expected schedule, other expectations regarding the preparation of the environmental document (including assumptions regarding impact analysis), and dispute resolution procedures.

- **Use the most stringent environmental requirements.** Because NEPA and CEQA are somewhat different with regard to procedural and content requirement (see Figure 4), the agencies should agree at the outset to apply whichever requirements are more stringent.

- **Determine the content of the EIS/EIR.** The scope and content of the EIS/EIR, and the respective responsibilities for reviewing interim drafts, should be spelled out clearly.

Additional information on coordinating NEPA and CEQA compliance can be found in Volume 1, Chapter 3, under "Guidance for Tiering from the CALFED Final Programmatic EIS/EIR".



Source:
R.E. Bass, A. I. Herson, and K. M. Bogdan. 1999. CEQA Deskbook. Solano Press Books. Point Arena, CA.

Figure 3
CEQA and NEPA: Parallel Processes

Difference	Subject Area	CEQA	NEPA
Substantive and Document Content	Substantive effect	Requires agencies to mitigate significant impacts when feasible	Requires such mitigation only for mitigated FONSIs; EISs need only full and complete discussion of mitigation
	Scope of project/action	Expansive definition of proposed project, covering whole of project	Allows limiting scope of those proposed actions with small federal handle
	Baseline for determining impacts	Normally requires existing conditions	Allows future no-action conditions
	Alternatives: IS/EA	Does not require alternatives discussion in ISs	Requires alternatives in EAs if project has unresolved resource conflicts
	Alternatives: EIR/EIS	Requires alternatives reducing proposed projectís significant impacts in EIRs; evaluation must be meaningful, equal level of detail not required	Requires full range of alternatives in EISs, evaluation in equal level of detail
	Final document	Response to comments and errata; no requirement to republish EIRs	Republish EISs to incorporate changes
	Socioeconomic analysis	Required in discussion of effects if socioeconomic impacts would lead to physical effects on the environment	Required in discussion of effects if socioeconomic impacts would lead to physical effects on the environment
Procedural Differences	Process oversight	Little OPR oversight	EPA EIS oversight and CEQ referral process
	Decision to prepare EIR or EIS	Requires EIR if fair argument of significant impact may be made	Requires EIS only if agency decision is arbitrary and capricious (unsupported by substantial evidence)
	Public notice and review: IS/EA	Requires public notice and review of ISs/NDs	Requires public notice, but allows more limited review of EAs/FONSIs
	Public notice and review: EIR/EIS	Requires public notice and review for Draft EIRs, not Final EIRs	Requires Federal Register public notice and public review for Draft and Final EISs
	Decision documentation	Requires written findings on mitigation of each significant impact, and statement of overriding considerations for unavoidable significant impacts	Requires less formal Record of Decision to explain project decision and which mitigation adopted
Litigation	Statutes of limitations	Short statute of limitations for legal challengesó30 days	No statute of limitations; *laches* doctrine may apply (unreasonable delay)

Figure 4
Major Differences between CEQA and NEPA

FEDERAL ENDANGERED SPECIES ACT, CALIFORNIA ENDANGERED SPECIES ACT, AND NATURAL COMMUNITY CONSERVATION PLANNING ACT

The CALFED agencies have developed a two-tiered approach for compliance with the federal Endangered Species Act of 1973 (FESA), California Endangered Species Act (CESA), and the Natural Community Conservation Planning Act (NCCPA). The first tier is a program-level evaluation of the CALFED Preferred Program Alternative under FESA and the NCCPA that was presented in CALFED's Multi-Species Conservation Strategy (MSCS). The second tier is project-level compliance for individual actions or groups of actions using a multi-purpose project-level environmental document called an "action specific implementation plan" (ASIP), which was designed for this purpose. This programmatic process was developed specifically to facilitate compliance for CALFED actions and is different from the processes that would be required for compliance with FESA, CESA, and the NCCPA for non-CALFED actions. It is therefore explained here in more detail than has been provided for other regulatory processes described in this guide.

ORGANIZATION OF THIS SECTION

This section is organized as follows:

- Overview—Describes the general requirements of FESA, CESA, and the NCCPA.
- Program-Level Compliance for the CALFED Preferred Program Alternative—Describes the components of CALFED's first-tier (program-level) compliance with FESA and the NCCPA:
  - the MSCS;
  - the agreement defining the CALFED agencies' mutual commitments for complying with FESA, CESA, and the NCCPA for CALFED actions;
  - the programmatic biological opinions issued by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS); and
  - the California Department of Fish and Game's (DFG's) approval and support of findings for the MSCS.
- Tiered Project-Level Compliance: Action Specific Implementation Plans—Describes the process for project-level compliance for CALFED actions. This discussion
  - provides an overview of the project-level compliance process,
  - describes the "focus area" addressed by the MSCS,

- explains the types of goals that the CALFED agencies established for the species evaluated in the MSCS,

> "**Incidental take**" of a listed species is take that would result from, but would not be the purpose of, an otherwise lawful activity.

- explains how the term "covered species" is used in relation to FESA and NCCPA compliance for CALFED actions and generally describes how lead agencies/project proponents would address species that are not covered by the CALFED program-level documents,

- describes the difference between the two types of conservation measures identified in the MSCS and how to incorporate these into project-level compliance,

- describes the compliance process for CALFED actions implemented by federal agencies and those implemented by State agencies,

- explains implementing agreements, and

- describes the relationship of FESA Section 10 and CESA Section 2081 to the MSCS/ASIP compliance process.

These sections are followed by answers to the following questions:

- Who Needs to Comply?
- How Long Does the Approval Process Take?
- What Information Does the Applicant Need to Provide?
- What Does the Application and Evaluation Process Entail?
- Does the Process Trigger the Need for Compliance with Other Regulations?
- What Are the Opportunities for Facilitating Compliance with This Process?

OVERVIEW

FEDERAL ENDANGERED SPECIES ACT. USFWS and NMFS administer FESA. FESA requires USFWS and NMFS to maintain lists of threatened and endangered species and provides for substantial protections for "listed" species. NMFS's jurisdiction under FESA is limited to the protection of marine mammals and fishes and anadromous fishes; all other species are within USFWS's jurisdiction.

Section 9 of FESA prohibits the take of endangered species and prohibits the violation of any regulations that prohibit the taking of threatened species. Actions implemented in accordance with a Section 7 biological opinion and an incidental take statement are not subject to Section 9's take prohibition. All other actions that would result in the take of a listed species require a permit issued under Section 10 of FESA, the most common of which is an "incidental take permit". Section 10 allows USFWS or NMFS, under certain conditions, to issue incidental take permits for actions whose purpose is not to take listed species, but for which it is

impracticable to avoid a take. To obtain an incidental take permit, an applicant must meet certain requirements, including a requirement to prepare a habitat conservation plan (HCP) that analyzes and explains an action's impacts on listed species. The HCP also must, among other things, discuss measures to minimize and mitigate the impacts, identify funding, and include a monitoring plan.

CALFED actions generally will be required to comply with Section 7 of FESA rather than Section 10 because most CALFED actions will be funded at least in part by a federal agency or will require a permit or approval from a federal agency. The MSCS (described below under "Program-Level Compliance for the CALFED Preferred Program Alternative") can be used to fulfill the requirements of Section 10 for CALFED actions. However, because CALFED actions usually will not involve compliance with Section 10, this guide focuses on how the MSCS may be used to comply with Section 7.

Section 7 of FESA requires all federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. To ensure that their actions do not result in jeopardy to listed species or adverse modification of critical habitat, each federal agency must consult with USFWS or NMFS, or both, regarding federal agency actions. If a Federal agency determines that an agency action may affect listed species or critical habitat, then it must request initiation of formal consultation with USFWS, NMFS, or both, depending on the affected species. The consultation is initiated when the federal agency submits a written request for initiation to USFWS or NMFS, along with the agency's biological assessment of its proposed action. If a Federal agency determines, with the written concurrence of the USFWS, NMFS, or both, as appropriate, that an action may affect but is not likely to adversely affect listed species or critical habitat, then no further consultation is required under FESA. Otherwise, USFWS or NMFS—or both—must prepare a written biological opinion describing how the agency's action will affect the listed species and its critical habitat.

"**Jeopardy**" is a term that means a Federal agency action would threaten the continued existence of a listed species or adversely modify the species' critical habitat.

"**Take**" means to harass, harm pursue, hunt, shoot, wound, kill, trap, capture, or collect a listed species. Harm includes actions, such as significant habitat modification, that kill or injure listed species.

If the biological opinion concludes that the proposed action would jeopardize the continued existence of a listed species or adversely modify its critical habitat, the opinion must suggest "reasonable and prudent alternatives" that would avoid that result, if any. If the biological opinion concludes that the project as proposed would involve the take of a listed species, but not to an extent that would jeopardize the species' continued existence, the opinion must include an "incidental take statement". The incidental take statement must specify an amount of take that may occur as a result of the action and suggest reasonable and prudent measures to minimize the impact of the take. If the action complies with the biological opinion and incidental take statement, it may be implemented without FESA being violated. USFWS and NMFS cannot issue an incidental take permit for an action that would warrant a jeopardy opinion under Section 7.

CALIFORNIA ENDANGERED SPECIES ACT. DFG administers CESA for all native species of fish, plants, and wildlife. CESA requires that DFG maintain lists of threatened and endangered species and provides for the protection of species on these lists.

CESA does not include a consultation process for State agencies, as FESA Section 7 does for federal agencies.

Like FESA, CESA prohibits the take of any listed species—in this case, those on CESA's list of endangered or threatened species. As under Section 10 of FESA, CESA Section 2081 requires that an incidental take permit be obtained for any project that would result in the take of a listed species. The requirements for obtaining an incidental take permit under CESA are similar—but not identical—to the requirements for obtaining an incidental take permit under FESA. For example, CESA does not specifically require the preparation of an HCP. However, like FESA, CESA generally requires an applicant to analyze and explain the project's impacts on listed species, identify measures to mitigate the impacts of taking the listed species, identify funding for implementation, and include a monitoring plan. Similar to USFWS and NMFS procedures under FESA, DFG cannot issue an incidental take permit for an action if that action would jeopardize the continued existence of a listed species.

Ordinarily, federal agencies are not subject to CESA and are not required to obtain CESA incidental take permits for federal agency actions; CESA generally applies only to entities and individuals.

NATURAL COMMUNITY CONSERVATION PLANNING ACT. The NCCPA authorizes and encourages conservation planning on a regional scale in California. The NCCPA addresses the conservation of natural communities as well as individual species. The mechanism for this regional conservation is the development of natural community conservation plans (NCCPs) that provide for early coordination efforts to protect natural communities, including listed species or species that are not yet listed. To be approved by DFG, an NCCP must adequately conserve species and natural communities within the plan area rather than minimize and mitigate the impacts of taking a listed species caused by individual projects that are carried out within the plan area, as is required under FESA and CESA. The NCCPA also provides an alternative to incidental take permits under CESA. Under the NCCPA, DFG may issue "NCCPA authorizations" for actions that would result in the take of any species, including listed species, that are adequately conserved by an approved NCCP.

> Within the context of the CALFED PPA, "**adequately conserve**" means to use conservation methods and procedures that are adequate to protect and perpetuate a species of fish, plant, or wildlife within the MSCS focus area, taking into consideration the whole of CALFED, including the direct and indirect effects of CALFED actions.

The NCCPA's focus on regional conservation, rather than individual project mitigation, is appropriate for a complex and extensive program like CALFED and is more easily integrated with FESA's Section 7 process than CESA's incidental take permitting process would be. In some instances, a CESA incidental take permit may be required for CALFED actions (see below under "Species Not Covered by the Program-Level Compliance Documents"). However, most CALFED actions can comply with both CESA and the NCCPA by obtaining an NCCPA

authorization. This section describes how NCCPA authorizations can be obtained for CALFED actions.

It is important to note that while NCCPA authorizations may be used to comply with CESA, they cannot be used to comply with FESA. CALFED actions must comply with FESA either through the Section 7 consultation process or the Section 10 permitting process. In addition, like CESA, the NCCPA does not ordinarily apply to federal agencies.

PROGRAM-LEVEL COMPLIANCE FOR THE CALFED PREFERRED PROGRAM ALTERNATIVE

Five documents establish CALFED's program-level compliance with FESA and the NCCPA:

- CALFED Bay-Delta Program Multi-Species Conservation Strategy
- Conservation Agreement regarding the CALFED Bay-Delta Program Multi-Species Conservation Strategy
- USFWS's Programmatic Biological Opinion on the CALFED Bay-Delta Program
- NMFS's CALFED Bay-Delta Program Programmatic Biological Opinion
- DFG's Natural Community Conservation Planning Act Approval of the CALFED Bay-Delta Program Multiple Species Conservation Strategy

Collectively, these documents cover the jurisdictions of USFWS, NMFS, and DFG, and they fulfill the various requirements of FESA and the NCCPA pertaining to the CALFED Preferred Program Alternative. USFWS, NMFS, DFG, and CALFED have coordinated their efforts to ensure that the documents create a single, coherent approach for regulatory compliance.

While separate regulatory approvals from all three agencies will be required for many CALFED actions, these program-level compliance documents create a single compliance process that may be used for all three approvals. The program-level compliance documents also help ensure that the species and habitat conservation measures necessary to obtain approvals from each agency are consistent and compatible, and are not duplicative.

CALFED MULTI-SPECIES CONSERVATION STRATEGY. The MSCS is an appendix of the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/ Environmental Impact Report (PEIS/EIR) that explains how CALFED will meet the requirements of FESA, CESA, and the NCCPA. The MSCS draws on key elements of the Preferred Program Alternative, such as the Ecosystem Restoration Program (ERP) and the Environmental Water Account (EWA), to outline a comprehensive strategy for the conservation of numerous species of fish, wildlife, and plants and their habitats. The MSCS presents a program-level environmental analysis of the Preferred Program Alternative that expands upon the PEIS/EIR analysis to address the conservation strategy and certain other issues pertinent to FESA and NCCPA compliance. The MSCS served as the program-level biological assessment

of the Preferred Program Alternative for purposes of initiating consultations with USFWS and NMFS under Section 7 of FESA. The MSCS also was submitted to DFG for approval as a program-level NCCP for the Preferred Program Alternative. Each of the FESA and NCCPA program-level compliance documents is based on the MSCS.

The MSCS creates a two-tiered approach to FESA and NCCPA compliance that corresponds to CALFED's two-tiered approach to compliance with NEPA and CEQA. The first tier of compliance is embodied in the MSCS itself and in the program-level compliance documents. For the second tier, the MSCS outlines a single project-level compliance process for both FESA and the NCCPA that complements the second-tier project-level environmental review of CALFED actions under NEPA and CEQA.

For first tier or program-level compliance, the MSCS identifies 244 "evaluated" species and 20 natural communities (habitat types) that could be affected by CALFED actions, establishes conservation goals for each species and natural community, and identifies conservation measures necessary to achieve the goals. This first tier of compliance is intended to ensure that, at the program level, the Preferred Program Alternative will not jeopardize the continued existence of listed species or destroy habitat critical to their survival, as required by FESA Section 7, and will conserve certain evaluated species, as required by the NCCPA.

For the second tier of compliance, the MSCS explains how individual CALFED actions can be designed to comply with FESA and the NCCPA and can be analyzed and authorized in a single, multi-purpose compliance process. The MSCS's project-level compliance process centers on use of the ASIP, a multi-purpose project-level environmental document that is intended to provide one format for all information necessary to initiate project-level compliance with FESA and the NCCPA. An ASIP must be prepared for any CALFED action that may adversely affect a covered species (see "Covered Species" below for an explanation of covered species).

Appendix B lists the species evaluated in the MSCS. Figure 5 illustrates the relationship between compliance with FESA, CESA, and the NCCPA for the CALFED Preferred Program Alternative and for individual CALFED actions.

CONSERVATION AGREEMENT REGARDING THE MULTI-SPECIES CONSERVATION STRATEGY. The Conservation Agreement Regarding the Multi-Species Conservation Strategy (Conservation Agreement), dated August 28, 2000, defines the CALFED agencies' mutual commitments with respect to the MSCS and the process for complying with FESA, CESA, and the NCCPA for CALFED actions. The Conservation Agreement applies to the:

- USFWS,
- U.S. Bureau of Reclamation,
- Bureau of Land Management,
- U.S. Environmental Protection Agency,
- U.S. Army Corps of Engineers,
- Natural Resources Conservation Service,
- NMFS,

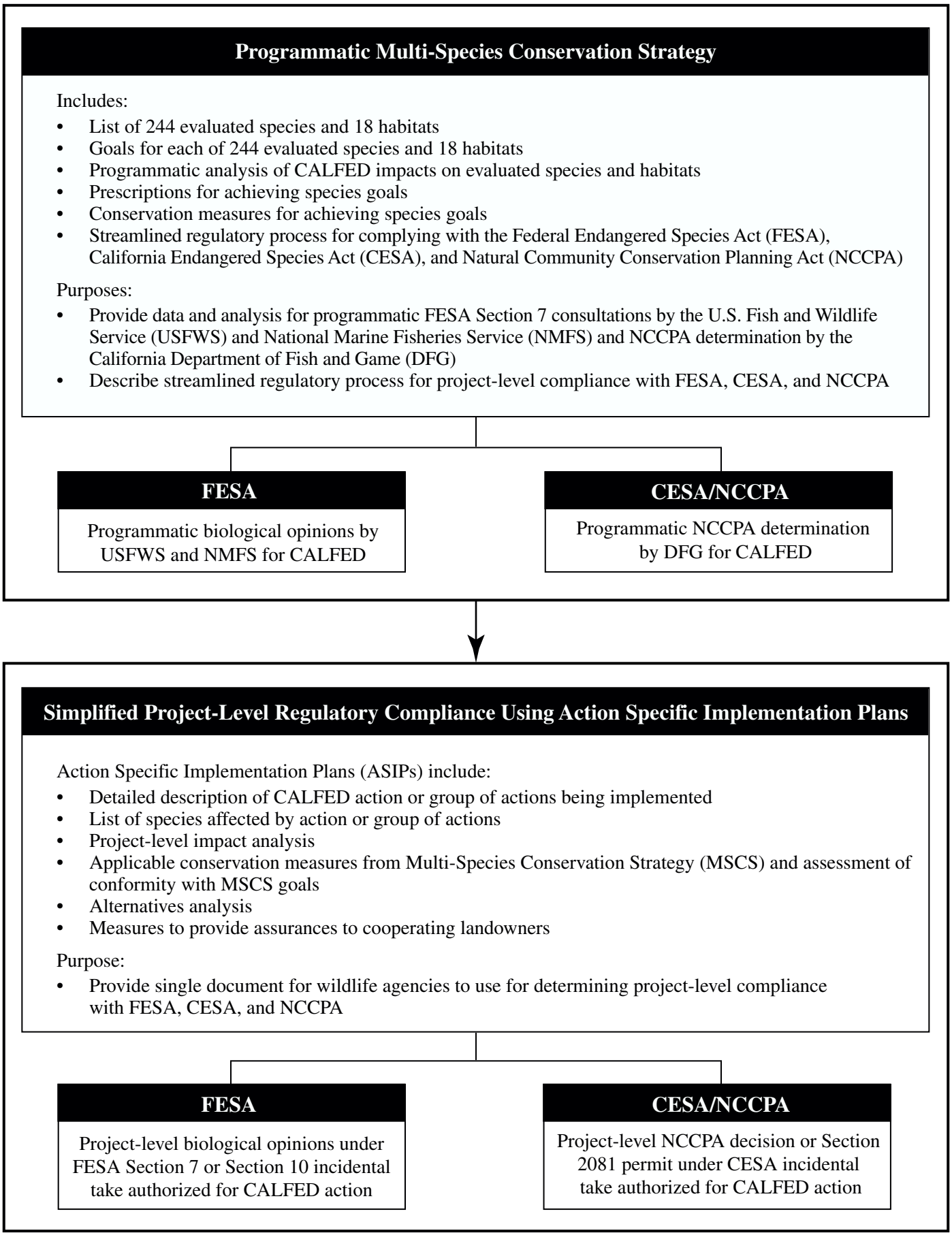


Figure 5
Programmatic Project-Level Compliance with FESA, CESA, and NCCPA

- California Resources Agency,
- California Department of Water Resources, and
- DFG.

In the Conservation Agreement, each agency agrees that if it approves, funds, or implements a CALFED action, it will ensure that the action follows and adheres to the MSCS and the other program-level compliance documents. Ordinarily, this will entail the preparation of an ASIP. However, the Conservation Agreement clarifies that an ASIP is not required for a CALFED action if the agency that approves, funds, or implements the action determines—with the written concurrence of USFWS, NMFS or DFG, as appropriate—that the action is not likely to adversely modify critical habitat designated pursuant to FESA or adversely affect a covered species (see "Covered Species" below for an explanation of covered species). USFWS, NMFS, and DFG have agreed to coordinate their review of ASIPs.

Through the Conservation Agreement, the CALFED agencies also have committed to spend at least $150 million per year to implement the ERP.

The Conservation Agreement is especially important for NCCPA compliance because it memorializes the commitment of federal agencies to implement and adhere to the MSCS, thus ensuring CALFED's program-level compliance with the NCCPA. As mentioned above, the NCCPA does not ordinarily apply to federal agencies. However, the participation of the federal CALFED agencies is essential to the success of the MSCS. Without the federal agencies' commitment to implement the MSCS, it would not be a viable program-level NCCP.

PROGRAMMATIC BIOLOGICAL OPINIONS. Based on the MSCS, the PEIS/EIR, and other CALFED program-level documents, USFWS prepared the Programmatic Biological Opinion on the CALFED Bay-Delta Program, dated August 28, 2000 (Attachment 6a to the CALFED Programmatic Record of Decision [ROD]). NMFS prepared the CALFED Bay-Delta Program Programmatic Biological Opinion, dated August 28, 2000 (Attachment 6b to the CALFED ROD). In the programmatic biological opinions, each agency concludes that the Preferred Program Alternative will not jeopardize the continued existence of any listed species and will not adversely modify the critical habitat of any listed species. In other words, USFWS and NMFS conclude that, at the program level, the Preferred Program Alternative complies with Section 7. The USFWS programmatic biological opinion establishes that the Preferred Program Alternative can be implemented without FESA being violated with respect to the listed species within USFWS's jurisdiction. The NMFS programmatic biological opinion has the same effect with respect to the listed species within its jurisdiction.

The programmatic biological opinions do not authorize incidental take of any species, nor do they authorize any specific CALFED action. However, once specific CALFED actions have been proposed, Section 7 consultations may be initiated for the actions under the simplified regulatory compliance process established in the MSCS.

For purposes of designing and implementing CALFED actions, it is important to understand the basis for the USFWS and NMFS programmatic biological opinions. The USFWS and NMFS "no-jeopardy" determinations are based on the assumption that the Preferred Program

Alternative will be implemented as described in the PEIS/EIR and the MSCS, and as further described and elaborated in the project description used by USFWS and NMFS included in the programmatic biological opinions.

Section 7 of FESA requires each biological opinion to include a detailed project description. To avoid any inconsistency and to simplify FESA compliance, USFWS and NMFS used the same project description in their programmatic biological opinions. However, in drafting the project description, USFWS and NMFS included certain details about implementation of the Preferred Program Alternative that are not explicit in the PEIS/EIR description of the Preferred Program Alternative. These details are, in effect, conditions for implementing several elements of the Preferred Program Alternative, particularly the ERP and the EWA. Failure to implement one of these details does not necessarily mean that a CALFED action will violate FESA. However, if the details in the project description used by USFWS and NMFS prove inaccurate (if they are not implemented), USFWS and NMFS will be required to re-evaluate the basis for their programmatic biological opinions and possibly issue new or revised programmatic biological opinions.

Perhaps the most significant details added to the USFWS and NMFS project description are the "ERP Milestones", which specify ERP actions to be implemented during Stage 1.

CALIFORNIA DEPARTMENT OF FISH AND GAME APPROVAL AND SUPPORTING FINDINGS FOR THE MULTI-SPECIES CONSERVATION STRATEGY. The California Department of Fish and Game Approval and Supporting Findings for the CALFED Bay-Delta Program Multiple Species Conservation Strategy (NCCPA Program Approval) dated August 28, 2000, is Attachment 7 to the CALFED ROD. The NCCPA Program Approval is DFG's determination that the MSCS satisfies the requirements of the NCCPA for a programmatic NCCP. In the NCCPA Program Approval, DFG determines that the MSCS identifies and provides for the regional or areawide protection and perpetuation of natural wildlife diversity, while allowing compatible and appropriate development and growth. If implemented in accordance with the MSCS and the Conservation Agreement, the CALFED Program will achieve the goals of the MSCS and will comply with the NCCPA and CESA.

The NCCPA Program Approval does not authorize incidental take of any species, nor does it authorize any specific CALFED action. However, once specific CALFED actions have been proposed, incidental take authorization may be obtained for certain listed and unlisted species under the simplified regulatory compliance process established in the MSCS.

The DFG NCCPA Approval uses the same project description as the USFWS and NMFS programmatic biological opinions.

TIERED PROJECT-LEVEL COMPLIANCE: ACTION SPECIFIC IMPLEMENTATION PLANS

GENERAL PROJECT-LEVEL COMPLIANCE PROCESS. The MSCS outlines a project-level FESA and NCCPA compliance process for CALFED actions that is designed to be systematic, efficient, and predictable. The second-tier compliance process requires the use of ASIPs. An ASIP is an environmental review document created for the MSCS that incorporates the

informational requirements of FESA and the NCCPA in one format. An ASIP tiers from the program-level compliance documents and explains how a CALFED action implements and adheres to the programmatic conservation strategy described in the MSCS.

USFWS, NMFS, and DFG will assist and advise lead agencies/project proponents for CALFED actions during the preparation of ASIPs. USFWS, NMFS, and DFG also will coordinate their comments regarding each completed ASIP and will ensure that the requirements for compliance with FESA and the NCCPA are consistent and are not duplicative.

CALFED Program implementation, in conjunction with the MSCS and programmatic biological opinions, will provide benefits in subsequent project-specific consultations. Specifically, individual projects that qualify for consultation will be evaluated within the context of the Program as a whole, which includes major elements designed to improve the environmental baseline and lead to the recovery of targeted species. These major elements will be subject to on-going monitoring, evaluation, and the application of adaptive management. Project-specific biological opinions will take into account the environmental benefits that accrue from the CALFED Program. As a result, USFWS and NMFS anticipate that implementation of the overall CALFED Program will streamline the ESA compliance process and, as actions are taken that benefit listed species, will reduce the need for additional provisions to satisfy legal requirements.

Under FESA, project proponents may use ASIPs to obtain Section 10 incidental take permits for CALFED actions in certain circumstances (see below under "CALFED Actions Implemented by State Agencies" and "Applicability of Section 10 of FESA"). However, for most CALFED actions, ASIPs will serve as project-level biological assessments of CALFED actions for purposes of initiating a Section 7 consultation. Based on the ASIPs, USFWS and NMFS will prepare action-specific biological opinions.

Under the NCCPA, ASIPs will serve as project-level NCCPs. Based on the ASIPs, DFG will issue NCCPA findings and determinations regarding CALFED actions. If an ASIP is prepared in accordance with the program-level compliance documents, DFG will issue an NCCPA approval for the CALFED action(s) addressed in the ASIP. The NCCPA approval will allow the action to be implemented in compliance with the NCCPA and CESA. A project proponent may use an ASIP to obtain a CESA incidental take permit in certain circumstances (see below under "Species Not Covered by the Program-Level Compliance Documents"). However, for most CALFED actions, this will not be necessary and would be inconsistent with the MSCS.

FOCUS AREA. The MSCS was developed primarily to address CALFED actions that occur within a defined "focus area". The MSCS focus area encompasses the legally defined Delta, Suisun Bay and Marsh, the Sacramento and San Joaquin Rivers and their tributaries downstream of major dams, and the potential locations of conveyance and water storage facilities. The species evaluated in the MSCS are species known to occur in this area.

Some CALFED actions implemented outside the MSCS focus area or within potential storage sites could adversely affect covered species. In such cases, the lead agencies/project proponents must prepare ASIPs (see "Covered Species" below).

CALFED actions that are implemented outside the MSCS focus area are also likely to affect species that are not covered by the program-level compliance documents; the MSCS does not specify conservation measures for such species. In addition, the MSCS does not contain conservation measures for many species present in potential locations of conveyance and water storage facilities that are not within the Delta, Suisun Bay and Marsh, or the Sacramento or San Joaquin Rivers and their tributaries. The MSCS offers little guidance on how to address impacts on any species not evaluated in the MSCS. An ASIP is not required for CALFED actions if they will not adversely affect a covered species. For such CALFED actions, regulatory approvals from USFWS, NMFS and DFG can be obtained through ordinary compliance processes.

SPECIES GOALS. The MSCS's programmatic conservation strategy is designed to meet certain goals for each of the species evaluated in the MSCS. The species goals were used to develop the MSCS conservation measures. In general, the MSCS conservation goals are highest for listed species and sensitive species that are likely to be most affected by CALFED actions. For these species, the MSCS conservation measures are the most ambitious and the most restrictive. For listed species and sensitive species that are likely to be somewhat less affected by CALFED actions, the species goals are less ambitious and the measures somewhat less restrictive. For less sensitive species that are likely to be affected by relatively few CALFED actions, the species goals and conservation measures are relatively modest.

Each of the species evaluated in the MSCS was assigned one of three conservation goals. The highest goal is "Recover". The Recover goal was assigned to species whose recovery depends on restoration of the Delta and Suisun Bay/Marsh ecosystems and for which the Preferred Program Alternative includes all or most of the actions necessary to recover the species. "Recover" means to arrest the species' decline, neutralize threats to the species, and ensure its long-term survival in nature.

The goal "contribute to recovery" was assigned to species where CALFED actions are likely to affect only a limited portion of the species' range and/or CALFED actions are likely to have limited effects on the species. For these species, the MSCS goal is to implement all actions included in the Preferred Program Alternative that are necessary for the recovery of the species. For most, if not all, of these species, actions beyond the scope of the Preferred Program Alternative will also be necessary for the species to be recovered fully.

The goal of "maintain" was assigned to species expected to be minimally affected by CALFED actions. For these species, the MSCS goal is to ensure that CALFED actions do not degrade the species' status or contribute to the need to list the species. Many "maintain" species are not in decline, and the conservation measures for these species are not intended to achieve their recovery.

The MSCS includes goals and measures for species that are not listed or sensitive because it is intended to be comprehensive and applicable over the long term. The MSCS is

intended to prevent new listings of species and to ensure that, even if new species are listed, the MSCS will remain a viable regulatory compliance strategy. The MSCS anticipates that if any species addressed in the MSCS is subsequently listed under FESA, it can be included relatively easily in USFWS's or NMFS's list of covered species (see "Covered Species" below), without major revisions to the MSCS being needed and without lengthy delays. The MSCS also anticipates that some of the species addressed in the MSCS will meet the requirements of the NCCPA and can be included on DFG's list of covered species.

COVERED SPECIES. Covered species are the species covered by the program-level compliance documents described above under "Program-Level Compliance for the CALFED Preferred Program Alternative". A lead agency/project proponent that follows the MSCS ASIP process can obtain FESA and NCCPA authorizations for specific CALFED actions that will result in the take of covered species.

The MSCS evaluated the potential effects of the Preferred Program Alternative on 244 species. From the evaluated species, USFWS, NMFS, and DFG each identified the species under its jurisdiction for which the MSCS fulfilled applicable statutory requirements at the program level. USFWS, NMFS, and DFG each have a different list of covered species, in accordance with their different jurisdictions and statutory authorities. However, most evaluated species that are listed under FESA or CESA are MSCS covered species. Project-level approvals can be obtained from all three agencies using one ASIP that addresses all pertinent covered species.

Section 7 biological opinions can address only species listed and proposed for listing under FESA. The NMFS list of covered species is included in the NMFS programmatic biological opinion and is limited to species of anadromous fish that are listed and proposed for listing under FESA. The USFWS list of covered species is included in the USFWS programmatic biological opinion and includes all other species that are listed or proposed for listing under FESA that were evaluated in the MSCS.

DFG's list of covered species is included in the NCCPA Approval. The NCCPA allows DFG to authorize the take, under the authority of the California Fish and Game Code, of any species adequately conserved in an approved NCCP.

SPECIES NOT COVERED BY THE PROGRAM-LEVEL COMPLIANCE DOCUMENTS. Some CALFED actions may adversely affect only FESA- or CESA-listed species that are not covered species, or a combination of covered species and listed species that are not covered. For example, many actions implemented as part of CALFED's Watershed Program may occur outside of the MSCS focus area and may not affect any of the Covered Species, but may affect other listed species. For CALFED actions such as these, a lead agency/project proponent must comply with FESA and CESA without substantial guidance from the MSCS or other program-level compliance documents. In these cases, a lead agency/project proponent may follow the ASIP process, but is not required to do so. The substantive and procedural requirements and the necessary regulatory approvals or permits may be somewhat different for the listed species that are not covered species than for covered species. However, USFWS's, NMFS's and DFG's commitment to coordinate their review and comments regarding CALFED actions in the ASIP

process should make the ASIP process more systematic, efficient, and predictable than seeking regulatory approvals from the three agencies separately, whether or not covered species are involved.

If a CALFED action will affect both covered species and listed species that are not covered, the lead agency/project proponent must use the ASIP process to address adverse effects of the action on the covered species. Although it cannot rely on the program-level compliance documents for the listed species that are not covered, the lead agency/project proponent may fulfill FESA and CESA requirements for these species by adding the necessary information and analyses to the ASIP prepared for the covered species. The need to prepare separate FESA and CESA compliance documents can in this way be avoided.

Under FESA Section 7, an ASIP can serve as the biological assessment of a CALFED action for both covered species and other species that are listed or proposed for listing. USFWS and NMFS may use the ASIP to issue a biological opinion for the action that addresses both covered species and other listed species.

Under the NCCPA, DFG may authorize only the take of covered species. DFG cannot authorize the take of any other CESA-listed species in an action-specific NCCPA approval. If a CALFED action will take a CESA-listed species that is not a covered species, a CESA Section 2081 incidental take permit must be obtained. If the CALFED action will take only CESA-listed species that are not covered species, an ASIP is not required and the lead agency/project proponent must follow the standards and guidelines in 14 CCR 783 *et seq.* to obtain an incidental take permit. If the CALFED action will take both covered species and other species listed under CESA, both an action-specific NCCPA approval and a Section 2081 incidental take permit must be obtained. A single ASIP may be used to obtain an NCCPA approval and a Section 2081 incidental take permit. However, the lead agency or other entity implementing the CALFED action must ensure that the ASIP meets the standards and guidelines of 14 CCR 783 *et seq.*

INCORPORATING APPROPRIATE CONSERVATION MEASURES. The MSCS conservation measures are listed in Attachment E of the MSCS. They are divided into two types: measures to avoid, minimize, and compensate for adverse effects of the Preferred Program Alternative on NCCP communities and evaluated species, and measures to enhance NCCP communities and evaluated species that are not directly linked to the adverse effects of CALFED actions.

The first type of measure is intended to apply to all CALFED actions that may cause adverse effects on evaluated species and natural communities. The precise measures necessary to avoid, minimize, and compensate for the adverse effects of individual CALFED actions or groups of actions will depend on the scope, location, and timing of the action(s), as well as the current status, distribution, and needs of the affected species and habitats.

The second type of measure is derived from measures in the ERP, EWA, Water Quality, Levee System Integrity, and Science Program elements of the Preferred Program Alternative. These measures to enhance NCCP communities and evaluated species were explicity or implicitly included in the Preferred Program Alternative, and the MSCS refined or added specificity or greater priority to certain measures. These specific proposed actions are identified

as conservation measures in the MSCS because they are important for purposes of FESA and NCCPA compliance.

It is essential to consider the basic difference between the two types of MSCS conservation measures. The first type—the avoidance, minimization, and mitigation measures—must be included in any CALFED action that may adversely affect a covered species. These conservation measures prescribe how individual CALFED actions should be designed and implemented. They are applied to proposed CALFED actions and are not implemented independently. The second type of measure—enhancement measures—is intended to affect the way CALFED actions are prioritized. These measures are selected CALFED actions that are inherently beneficial for conservation purposes and must be implemented for the MSCS to achieve its goals. Lead agencies are responsible for ensuring that the first type of conservation measure is included in CALFED actions. Implementation of the second type of conservation measure is the collective responsibility of the CALFED agencies and CALFED. The following two sections describe the application of the two types of conservation measures to individual CALFED actions or groups of actions.

AVOIDANCE, MINIMIZATION, AND COMPENSATION MEASURES. Attachment E of the MSCS includes one table of conservation measures for each group of evaluated species according to the MSCS's species goals: "Recovery", "contribute to recovery", and "maintain". The avoidance, minimization, and compensation measures are listed in the second column of these tables. The conservation measures that add detail to and prioritize CALFED actions (Type 2 conservation measures) are in the first column.

A lead agency/project proponent attempting to identify which avoidance, minimization, and compensation measures apply to a proposed CALFED action should first determine which species might be affected by the action. This may be accomplished as part of an initial study, environmental assessment, or general constraints analysis for the action. Once a list of potentially affected species is developed, it should be compared with USFWS, NMFS, and DFG lists of covered species. For each covered species potentially affected by the action, the lead agency should consult the tables in Attachment E of the MSCS to determine which measures the MSCS prescribes for such species. Attachment E includes conservation measures for all 244 species evaluated in the MSCS; however, lead agencies are required to implement only the measures for covered species.

> For each covered species potentially affected by a CALFED action, the CALFED lead agency must include appropriate avoidance, minimization, and compensation measures from the MSCS table of conservation measures.

Many of the avoidance, minimization, and compensation measures are quite general and provide flexibility in their application. Lead agencies/project proponents should consult with USFWS, NMFS, or DFG, as appropriate, to determine how to apply them. However, even the most general measures identify mitigation priorities that may be used to inform the design of CALFED actions. More specific measures should be given special attention because they allow less flexibility in their application.

The MSCS requires that actions completely avoid the take of certain species. These species are extremely rare or have a special regulatory status apart from, or in addition to, being listed under FESA or CESA. For example, the Fish and Game Code prohibits the take of "fully protected species" (see Fish and Game Code Sections 3511, 4700, 5050, and 5515). Fully protected species need not be listed under CESA to be protected by this take prohibition. State law does not allow DFG to issue incidental take permits for fully protected species, as CESA allows for listed species. When siting CALFED actions, lead agencies/project proponents should make careful note of the species for which take must be avoided.

Ideally, lead agencies/project proponents should include appropriate MSCS conservation measures in the project description of each CALFED action. This will allow for the most streamlined and efficient compliance process. If all necessary conservation measures are included in the project description used for purposes of NEPA and CEQA compliance, the ASIP process may be conducted concurrently with the NEPA and CEQA compliance processes. Rather than imposing new mitigation measures or project design specifications for FESA and NCCPA compliance, USFWS, NMFS, and DFG can approve a project as proposed under CEQA and NEPA. To ensure that the necessary conservation measures are included in the project description at this early stage of project review, the lead agency/project proponent should confer with USFWS, NMFS, and DFG immediately after an initial study or environmental assessment has been prepared.

ENHANCEMENT MEASURES. The MSCS conservation measures intended to enhance NCCP communities and evaluated species and not directly linked to the adverse effects of CALFED actions are described in the first column of the tables in Attachment E of the MSCS. As explained above, these measures are not intended to mitigate the effects of CALFED actions. They are intended generally to assign priority to various Preferred Program Alternative–implementing actions. Lead agencies/project proponents should refer to the enhancement measures when selecting and designing CALFED actions. Where practicable, CALFED actions that implement or include MSCS enhancement measures should be given a higher priority than actions that do not. While it may not be necessary to implement any particular enhancement measure to meet FESA or NCCPA requirements for any individual CALFED action, the most effective way to ensure that the enhancement measures are ultimately implemented is to develop or select for implementation those CALFED actions that include them.

ECOSYSTEM RESTORATION PROGRAM ACTIONS. Reviewing the MSCS enhancement measures is especially important during the design or selection of any ERP action. The MSCS does not require that all ERP actions include the implementation of enhancement measures. However, where practicable, ERP actions should incorporate or reflect the priorities stated in MSCS enhancement measures. For example, the first enhancement measure identified in Attachment E of the MSCS is:

> The geographic priorities for implementing ERP actions to protect, enhance, and restore saline emergent wetlands and associated habitats for the Suisun ornate shrew should be (1) western Suisun Marsh, (2) Napa marshes and eastern Suisun Marsh, and (3) Sonoma marshes and Highway 37 marshes west of Sonoma Creek.

This enhancement measure does not require all ERP actions benefiting the Suisun ornate shrew to be implemented in the geographic priority areas. Additionally, it is not a condition of any particular CALFED action that an ERP action be implemented in the western Suisun Marsh or other priority area. However, when selecting the location of ERP actions that restore or enhance saline emergent wetlands and associated habitats for the Suisun ornate shrew, the CALFED agencies should generally give priority to these three geographic areas. Before proposing any ERP action intended to protect, restore, or enhance Suisun ornate shrew habitat, the lead agency/project proponent should generally review the MSCS enhancement measures for the Suisun ornate shrew to see whether any can be incorporated into the action.

When selecting or designing ERP actions, lead agencies/project proponents should also consult the ERP milestones adopted by USFWS, NMFS, and DFG (see the USFWS and NMFS programmatic biological opinions and the NCCPA Approval). For example, USFWS and DFG have specified that the restoration of 7,000 acres of saline emergent wetland in the Suisun Bay and Marsh Ecological Management Unit during Stage 1 is a necessary milestone for the ERP program. This milestone is intended to benefit the Suisun ornate shrew and other species. Therefore, although not all ERP actions are required to contribute to this milestone, a lead agency/project proponent should give additional priority to potential ERP actions that contribute to the milestone.

An ERP action that would restore saline emergent wetlands within the Suisun Bay and Marsh Ecological Management Unit and that is located within one of the MSCS geographic priority areas during Stage 1 would clearly reflect the priorities of the program-level compliance documents and would help fulfill the Preferred Program Alternative's requirements for compliance with FESA and the NCCPA. By doing so, the ERP action would help ensure that USFWS, NMFS, and DFG will not be required to re-evaluate or revise the programmatic biological opinions or the NCCPA Approval.

OTHER ACTIONS. MSCS enhancement measures also pertain to elements of the Preferred Program Alternative other than the ERP. Several of the enhancement measures pertain to the EWA and the Water Management Strategy. These enhancement measures are reflected in the Environmental Water Account Operating Principles Agreement (EWA Agreement), which is attached to the CALFED ROD. In other words, by adhering to the EWA Agreement, the CALFED agencies should implement the MSCS enhancement measures pertaining to the EWA and the Water Management Strategy. Fewer MSCS enhancement measures pertain to the Water Quality Program, the Levee System Integrity Program, the Initial Storage Investigation, and other elements of the Preferred Program Alternative. Where practicable, lead agencies/project proponents should review the MSCS enhancement measures and incorporate or reflect their priorities in actions developed for these elements.

CALFED ACTIONS IMPLEMENTED BY FEDERAL AGENCIES. If a CALFED action implemented by a federal agency will result in the take or adversely affect a covered species, the federal agency must comply with the program-level compliance documents by preparing an ASIP and following the environmental review process prescribed in the MSCS. The ASIP will serve as the biological assessment of the federal agency's action under FESA Section 7, and

USFWS or NMFS will prepare an action-specific biological opinion for the action based on the ASIP.

As mentioned earlier, CESA and the NCCPA generally do not apply to federal agencies. No permit or authorization is required from DFG under CESA or the NCCPA for CALFED actions implemented entirely by a federal agency. However, under the Conservation Agreement, federal CALFED agencies must implement and adhere to the MSCS for all CALFED actions that may adversely affect any covered species, including species on DFG's list of covered species. The MSCS requires all entities implementing CALFED actions to prepare an ASIP that includes information and analysis required by the NCCPA and also includes MSCS avoidance, minimization, and compensation measures for species on DFG's list of covered species. If the ASIP fulfills the requirements of the NCCPA, DFG will issue an action-specific NCCPA approval for the federal agency action.

CALFED ACTIONS IMPLEMENTED BY STATE AGENCIES. As with federal agencies, a State agency implementing a CALFED action must comply with the program-level compliance documents by preparing an ASIP and following the environmental review process prescribed in the MSCS if the action will take or adversely affect a covered species. The ASIP will serve as the project-specific NCCP for the State agency's action under the NCCPA and, if the ASIP meets NCCPA requirements, DFG will issue an action-specific NCCPA approval for the action.

Section 7 of FESA applies to any action implemented by a State agency that is approved, funded, or carried out, in whole or in part, by a federal agency and that may adversely affect a species listed under FESA. If Section 7 applies to a CALFED action implemented by a State agency, the ASIP prepared for the action will serve as the biological assessment of the action, and USFWS and/or NMFS will prepare an action-specific biological opinion for the action based on the ASIP.

If Section 7 does not apply to a State agency action but the action will take a species listed under FESA, the State agency must obtain an incidental take permit for the action under FESA Section 10. Where CALFED actions are concerned, this means that the ASIP prepared for the action must address the requirements of Section 10, including the requirement to prepare an HCP. If the action will also take or adversely affect a species on DFG's list of covered species, the State agency must also include appropriate MSCS conservation measures for these species and submit the ASIP for DFG's approval. ASIPs can be used to fulfill the requirements of both Section 10 and the NCCPA.

If the action will take or adversely affect a species on DFG's list of covered species, an ASIP must be prepared for the action whether or not a permit or authorization is required under FESA. However, if Section 7 of FESA does not apply to a CALFED action implemented by a State agency and the action will not involve the take of or adversely affect a species listed under FESA, no permit or authorization under FESA is required for the action and no consultation with USFWS or NMFS is required. In such a case, therefore, the ASIP need not address the requirements of FESA and need not be distributed to USFWS or NMFS for review. In this circumstance, the ASIP must only address the requirements of the NCCPA and, if applicable, CESA for DFG's covered species.

NEED FOR AN IMPLEMENTING AGREEMENT. For each ASIP, an implementing agreement will be required that establishes the commitments and responsibilities necessary for implementation of the ASIP. The implementing agreement must be executed by the agency or private entity that will implement the CALFED action addressed in the ASIP and by DFG. DFG will provide an implementing agreement template that may be used for most CALFED actions.

An implementing agreement is required for each ASIP to ensure that it is implemented in compliance with the NCCPA. Because compliance with the NCCPA is not mandatory—i.e., the NCCPA planning process is a *voluntary* alternative to the CESA incidental take permitting process—an implementing agreement is necessary to allow DFG to enforce each ASIP. If DFG were unable to enforce an ASIP, it could not issue an action-specific NCCPA approval based on the ASIP.

FESA Section 7 does not require an implementing agreement for actions addressed in biological opinions. However, an implementing agreement ordinarily is necessary for actions subject to FESA Section 10. For these actions, the implementing agreement establishes the commitments and responsibilities for implementation of the HCP required by Section 10. For CALFED actions, the implementing agreement used to comply with the NCCPA can also fulfill the need for an implementing agreement under FESA Section 10 if USFWS or NMFS, as appropriate, is consulted during its preparation.

APPLICABILITY OF SECTION 10 OF FESA. As mentioned above, FESA Section 10 will apply to a CALFED action if the action is not authorized, funded, or carried out by a federal agency, and if the action will take a species listed under FESA. For example, if a private entity proposes to implement an ERP action using only State, local, and private funding sources, and will not require a federal permit or approval (other than a FESA permit or approval) and the action will take a species listed under FESA, Section 10 will apply to the action. The private entity would then be required to obtain an incidental take permit. USFWS, NMFS, or both, as appropriate, can authorize the incidental take of covered species under FESA Section 10 based on the MSCS and ASIPs submitted by the proponents of specific CALFED actions. Among other things, the ASIP would be an HCP. The ASIP could tier from the program-level compliance documents and would be required to include appropriate MSCS conservation measures. The ASIP would also be subject to the more complex procedural and substantive requirements that apply to incidental take.

Nonfederal CALFED agencies and implementing entities may also elect to obtain a Section 10 incidental take permit for CALFED actions that are subject to Section 7. In this circumstance, compliance with both Section 7 and Section 10 would be necessary. In this case, the specific identified actions to be conducted by the Federal agency during the implementation of the HCP should be consulted on as part of the Section 7 consultation conducted for the HCP. This allows the USFWS and/or NMFS to conduct one formal consultation that incorporates the actions for the HCP and any specified or identified cooperative Federal action into one biological opinion. The single biological opinion issued by the USFWS and/or NMFS would help eliminate duplication because it would address both the Federal action and the non-Federal action, and it

would include an incidental take permit that authorizes any incidental take by the Section 10 permitee.

While this would increase the complexity and duration of the compliance process, there are some benefits to FESA Section 10 compliance that may warrant the additional regulatory burden. Incidental take permits under Section 10 may cover both species that are listed under FESA and specified species that are not yet listed, in the event they become listed. In addition, Section 10 incidental take permits are subject to the "No Surprises Rule", which ensures that additional restrictions on the use of land or water will not be imposed after permit issuance, except under certain limited circumstances. Section 10 can therefore provide long-term regulatory stability under FESA for nonfederal entities willing to fulfill Section 10's substantive and procedural requirements.

APPLICABILITY OF SECTION 2081 OF CESA. CESA Section 2081 will apply only to CALFED actions that are implemented by a State or local agency, or a private entity, that will take a species listed under CESA that is not included in DFG's list of covered species (see "Covered Species" above). Section 2081 will most likely apply to CALFED actions implemented outside of the MSCS focus area or in potential locations of conveyance and water storage facilities that are not within the Delta, Suisun Bay and Marsh, or Sacramento or San Joaquin Rivers and their tributaries.

The MSCS and the NCCPA Approval prescribe a process for compliance with the NCCPA that will allow CALFED actions to be implemented in compliance with CESA and the NCCPA. The NCCPA Approval establishes the Preferred Program Alternative's program-level compliance under the NCCPA and CESA for all species listed under CESA that are known to occur in the MSCS focus area, with the exception of the potential locations of water storage facilities and associated conveyance facilities. The MSCS and the NCCPA Approval apply to all CALFED actions that may adversely affect any of the species on DFG's list of covered species. Therefore, few, if any, CALFED actions carried out in the MSCS focus area are likely to require an incidental take permit under CESA. As mentioned above, any CALFED action that requires a CESA incidental take permit must fulfill the substantive and procedural requirements of 14 CCR 783 *et seq*.

WHO NEEDS TO COMPLY?

CALFED agencies that approve, fund, or carry out any CALFED action must ensure that the action implements and adheres to the FESA and NCCPA program-level compliance documents and the MSCS if the CALFED action may affect any covered species. In most cases, the CALFED agencies that are the lead agencies under CEQA or NEPA will have the principal responsibility for ensuring compliance. If neither the CEQA nor the NEPA lead agency is a CALFED agency, the CALFED agency or agencies that approve or fund the action must ensure compliance.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The length of the FESA and NCCPA approval process will depend on the degree to which the FESA and NCCPA approval process occurs concurrently with the NEPA and CEQA review process. If an ASIP that fulfills the requirements of the MSCS is included as part of draft NEPA and CEQA environmental review documents, the FESA and NCCPA approval process can be completed at approximately the same time that the NEPA and CEQA process is completed. The time required to prepare an ASIP will vary greatly depending on the scope, duration, and complexity of each CALFED action and its impacts on covered species and natural communities.

The Section 7 approval process, if applicable, will be initiated at the time a completed ASIP is submitted to USFWS or NMFS accompanied by a written request to initiate consultation. The Section 7 consultation process usually is completed 135 days from the date it is initiated, but may be extended for large or complex actions. From the date that formal consultation is initiated, the USFWS and/or NMFS is allowed 90 days to consult with the agency and applicant (if any) and 45 days to prepare and submit a biological opinion; thus a biological opinion is submitted to the Federal agency within 135 days of initiating formal consultation. The 90-day consultation period can be extended by mutual agreement of the Federal agency and the USFWS and/or NMFS; however, if an applicant is involved, the consultation period cannot be extended more than 60 days without the consent of the applicant.

If a FESA Section 10 incidental take permit must be obtained for a CALFED action, the approval process may be considerably longer than with the Section 7 consultation process. However, the NEPA documentation for a Section 10 permit, if appropriately structured, can also serve as the NEPA documentation for a project, thus eliminating a duplicate step. FESA does not prescribe a time limit for the incidental take permitting process. A project proponent wishing to obtain an incidental take permit must develop an HCP. Development of an HCP may require 6 months to several years, but it may be initiated before the CEQA and NEPA environmental review process begins.

Like FESA Section 10, the NCCPA does not prescribe time limits for NCCPA planning. Under the MSCS and the NCCPA Approval, a lead agency/project proponent may achieve compliance with the NCCPA by preparing an ASIP that meets the requirements of the NCCPA. As noted, the time required to prepare an ASIP will vary greatly depending on the CALFED action for which it is prepared.

If a CESA Section 2081 incidental take permit is required, the permitting process must be concluded within 150 days from the date the CEQA lead agency approves the action, or the date DFG receives a completed permit application, whichever is later. If DFG is the lead agency for the proposed action, the permitting process must be completed within 180 days from the date that DFG receives a complete application.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

An ASIP must include:

- a detailed project description of the CALFED action or group of actions to be implemented, including site-specific and operational information;

- a list of covered species and any other special-status species that occur in the action area;

- an analysis identifying the direct, indirect, and cumulative impacts on the evaluated species and other special-status species occurring in the action area (along with an analysis of impacts on any FESA-designated critical habitat) likely to result from the proposed CALFED action or group of actions, as well as actions related to and dependent on the proposed action;

- measures the implementing entity will undertake to avoid, minimize, and compensate for such impacts and, as appropriate, measures to enhance the condition of NCCP communities and covered species, with a discussion of:

  – a plan to monitor the impacts and the implementation and effectiveness of these measures,

  – the funding that will be made available to undertake the measures, and

  – the procedures used to address changed circumstances;

- measures the implementing entity will undertake to provide commitments to cooperating landowners, consistent with the discussion in Section 6.3.5 of the MSCS;

- a discussion of alternative actions the applicant considered that would not result in take, and the reasons why such alternatives are not being utilized;

- additional measures USFWS, NMFS, and DFG may require as necessary or appropriate for compliance with FESA, CESA, and the NCCPA; and

- a description of how and to what extent the action or group of actions addressed in the ASIP will help CALFED achieve the MSCS goals for the affected covered species (i.e., how the ASIP implements the MSCS).

The depth and level of detail required to fulfill each of these information requirements will vary depending on whether Section 7 or Section 10 of FESA applies to the CALFED action addressed. For example, if FESA Section 10 applies to the action, the degree to which the ASIP incorporates procedures used to address changed circumstances will be much greater than for actions subject to FESA Section 7.

For detailed guidance on completing ASIPs, see CALFED's guidebook on preparation and processing of ASIPs.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

The FESA and NCCPA compliance process prescribed by the program-level compliance documents and the MSCS is relatively simple. For each CALFED action that may adversely affect a covered species, an ASIP must be prepared and submitted to USFWS, NMFS, or DFG, as appropriate, for review. An ASIP is not required and no further consultation is required under FESA for CALFED actions if a Federal agency determines, with the written concurrence of the USFWS, NMFS, or both, as appropriate, that an action may affect but is not likely to adversely affect listed species or critical habitat. If Section 7 applies to the action addressed in the ASIP, the ASIP should be accompanied by a written request to initiate consultation under Section 7 from the federal agency that will approve, fund, or carry out the action. USFWS and/or NMFS will review the ASIP and issue an action-specific biological opinion based on the ASIP.

If FESA Section 10 applies to the action, the ASIP should include an HCP and should be submitted to USFWS and/or NMFS along with an incidental take permit application. This will initiate the incidental take permitting process prescribed in FESA regulations. USFWS and/or NMFS will determine whether the ASIP fulfills the requirements of Section 10 and, if it does, will issue an incidental take permit based on the ASIP. For most CALFED actions subject to Section 10, a draft implementing agreement will be required and should be included with the ASIP and permit application.

Under the NCCPA, the ASIP and an implementing agreement should be submitted to DFG. DFG will the review the ASIP and the implementing agreement to determine whether they fulfill the requirements of the NCCPA. If they do, DFG will sign the implementing agreement and issue an action-specific NCCPA approval for the action addressed in the ASIP.

If CESA Section 2081 applies, the ASIP may be submitted with a CESA incidental take permit application. DFG will determine whether the ASIP fulfills the requirements of Section 2081 and, if it does, will issue an incidental take permit based on the ASIP.

The program-level compliance documents and the MSCS anticipate and create an opportunity for informal consultation with USFWS, NMFS, and DFG. Ideally, the ASIP developed for a proposed action will have been reviewed informally by each agency whose covered species may be affected by the action before being formally submitted to the agency. If this occurs, the ASIP may be reviewed formally by USFWS, NMFS, and DFG during the NEPA and CEQA environmental review process for the proposed action, and the agencies can issue necessary FESA and NCCPA authorizations or approvals at or near the completion of the NEPA and CEQA process.

DOES THE PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Before issuing an NCCPA approval or CESA incidental take permit, DFG must comply with CEQA. In most cases, DFG will be a CEQA responsible agency and will participate in the environmental review process conducted by the CEQA lead agency. In the unlikely event a proposed CALFED action is not otherwise subject CEQA, DFG's issuance of an action-specific NCCPA approval or CESA incidental take permit will trigger the need for compliance with

CEQA, and DFG will need to act as the CEQA lead agency and ensure that the proposed action complies with CEQA.

USFWS and NMFS are not ordinarily required to comply with NEPA before issuing a Section 7 biological opinion. An exception applies if the biological opinion adds conditions, requirements, or measures to the action that were not contemplated as part of the NEPA review of the project, and that may result in significant environmental impacts.

USFWS and NMFS must comply with NEPA before issuing a Section 10 incidental take permit. In many cases, USFWS or NMFS will be a cooperating agency under NEPA and will participate in the environmental review process conducted by the NEPA lead agency. If USFWS or NMFS is the only federal agency that will authorize or fund a proposed CALFED action, USFWS or NMFS must act as the NEPA lead agency and ensure that the proposed action complies with NEPA. In other words, as in the case of DFG's issuance of an action-specific NCCPA approval, in the unlikely event a proposed CALFED action is not otherwise subject to NEPA, the USFWS or NMFS issuance of an incidental take permit will trigger the need for compliance with NEPA.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The program-level compliance documents and the MSCS provide the opportunity for a more efficient, systematic, and predictable FESA and NCCPA compliance process. The following are recommendations for taking greatest advantage of this opportunity:

1. Consult informally with USFWS, NMFS and DFG at the time the initial study, environmental assessment, or general constraints analysis is conducted. USFWS, NMFS, and DFG can provide advice and guidance about what covered species are likely to be affected and can identify issues for consideration during design and development of the CALFED action. Continue to involve the agencies during action planning and ASIP development.

2. Review information provided in the MSCS and program-level compliance documents during the early stages of project design and review to ensure consistency with those documents. Specifically, review the project description used for the program-level compliance documents to ensure consistency.

3. Start early to survey for covered species and natural communities using survey protocols published by USFWS, NMFS, and DFG. Surveying may not be necessary for terrestrial vertebrates and invertebrates if these species are presumed to exist at the site on which the action will be implemented.

4. Design the action and construction plans and specifications to avoid the habitat of covered species.

5. Develop the ASIP before or concurrent with draft NEPA and CEQA documents. Incorporate applicable MSCS conservation measures in the project description for the action.

6. Include in the ASIP information necessary for a Fish and Wildlife Coordination Act report, where applicable. This will help minimize the time necessary for USFWS's review of the ASIP.

Additional recommendations for facilitating compliance with this process are provided in Volume 1, Chapter 3 under "Integrating Environmental Permitting into the NEPA/CEQA Process".

OTHER FEDERAL LAWS AND REGULATIONS

SECTION 404 OF THE CLEAN WATER ACT/SECTION 10 OF THE RIVERS AND HARBORS ACT

OVERVIEW

Section 404 of the Clean Water Act (CWA) requires that a permit be obtained from the U.S. Army Corps of Engineers (USACE) for the discharge of dredged or fill material into "waters of the United States, including wetlands". Section 10 of the Rivers and Harbors Act of 1899 prohibits the unauthorized obstruction or alteration of any navigable waters of the United States without a permit from USACE. If Section 404 jurisdiction encompasses areas regulated by Section 10, USACE typically combines the permit requirements of Section 10 and Section 404 into one permitting process.

Waters of the United States is a term used to describe areas that fall under federal jurisdiction under the Clean Water Act. Waters of the United States include, but are not limited to:

- navigable waters;
- tributaries of navigable waters;
- waters that are, were, or may be used in interstate or foreign commerce;
- interstate waters;
- intrastate lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds used by interstate travelers for recreation and other purposes, the use, degradation or destruction of which could affect interstate or foreign commerce. This includes waters that:
  - are used by interstate or foreign travelers for recreation
  - are the source of fish or shellfish sold in interstate or foreign commerce, or
  - are used for industrial purposes by industries engaged in interstate commerce.

USACE issues two types of permits under Section 404 and Section 10, general permits (either nationwide or regional) and standard permits (either letters of permission or individual permits). General permits—nationwide permits and regional general permits—are issued by USACE to streamline the Section 404 process for nationwide, statewide, or regional activities that have minimal environmental impacts. Standard permits—letters of permission and individual permits—are issued for activities that do not qualify for a general permit, i.e., that may have more than a minimal adverse environmental impact.

Figure 6 illustrates the Section 404 and Section 10 permit process.

WHO NEEDS TO COMPLY?

Section 404 and Section 10 requirements apply to any person or entity proposing to work in, over, or under navigable waters of the United States (Section 10), or proposing to dump or

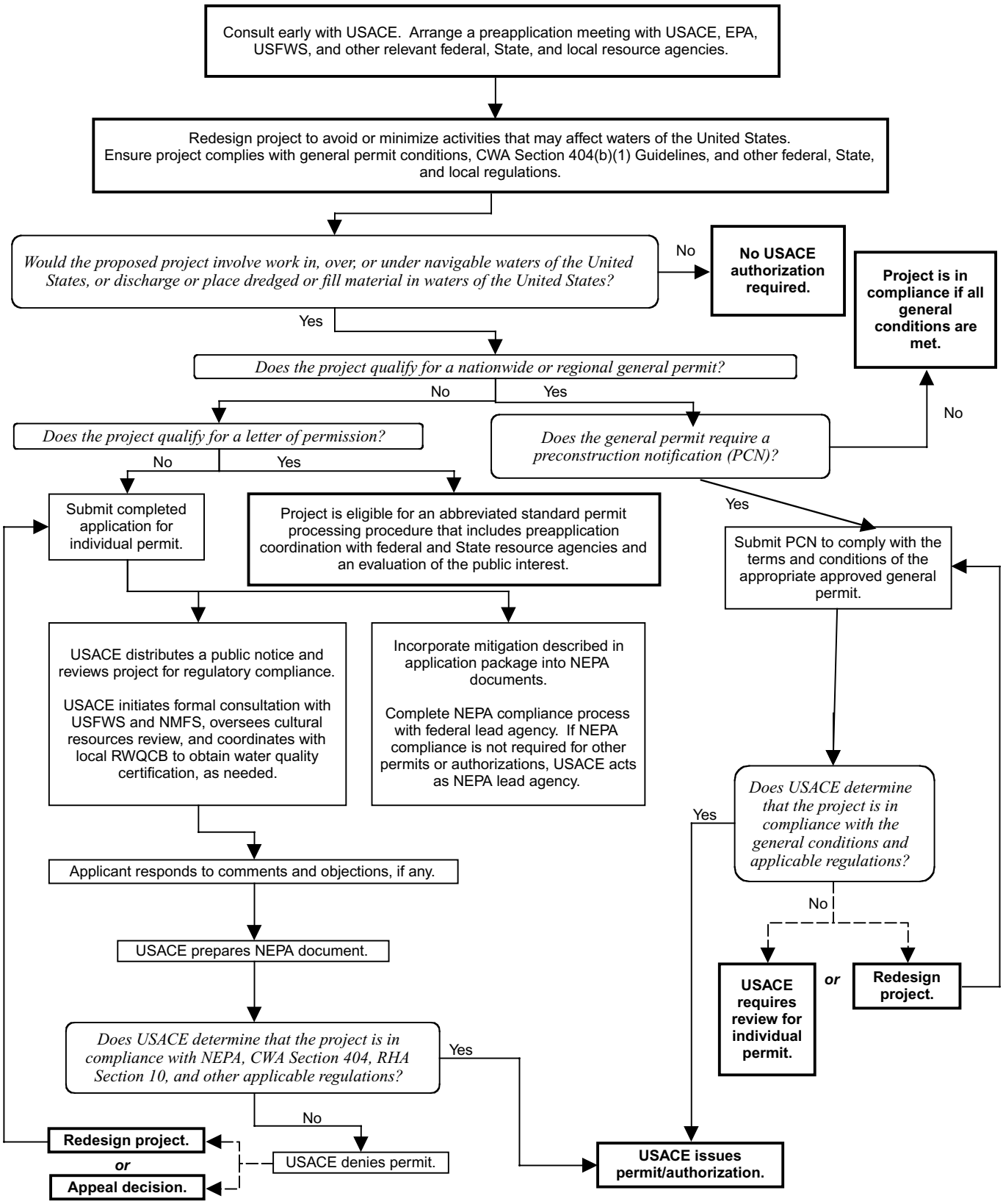


Figure 6
Clean Water Act Section 404 Permit Process

place dredged or fill material in waters of the United States (Section 404). Actions typically subject to Section 404 requirements are those that would take place in wetlands or stream channels that convey natural runoff, including intermittent streams, even if they have been realigned. Artificial channels that convey only irrigation water usually are not included, unless they connect directly to jurisdictional waters of the United States. Within stream channels, a permit under Section 404 would be needed for any discharge activity below the ordinary high-water mark, which is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, or the presence of litter or debris.

The following types of activities involving navigable waters of the United States typically require permits from USACE under either Section 404 or Section 10, or both:

- construction or modification of levees, dams, and dikes;
- other structures or work, including excavation, dredging, and/or disposal activities within, under, or over the navigable waters;
- activities that alter or modify the course, condition, location, or physical capacity of these waters; and
- discharges of dredged or fill material.

WHO IS EXEMPT?

Certain activities are exempt from Section 404 permit requirements:

- normal ongoing (as of 1985) farming, ranching, and forestry activities, such as plowing, minor draining of upland areas to waters of the United States, and harvesting;
- constructing and maintaining stock ponds or irrigation ditches, or maintaining drainage ditches;
- constructing or maintaining farm, forest, or mining roads in accordance with best management practices (BMPs);
- maintaining or, in emergency situations, reconstructing structures that are currently serviceable;
- any work in uplands (including sedimentation basins); and
- activities regulated by an approved program of BMPs authorized by Section 208(b)(4) of the CWA; and
- construction of USACE civil works projects specifically authorized by Congress.

There are no exemptions from Section 10 permit requirements.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The length of the approval process varies with the permit requested. See "What Does the Application and Evaluation Process Entail?" below for more information on these permits.

NATIONWIDE PERMITS. For nationwide permits (NWPs) where a preconstruction notification (PCN) is required (see below for details), USACE has 30 days to determine whether a PCN package has been submitted with all required information. Once the package has been determined to be complete, USACE has 45 days (from application submittal) to either verify that the work can be authorized under the applicable NWP, or require that the project proceed under an individual permitting process.

REGIONAL GENERAL PERMITS. To be eligible for a regional general permit (RGP), the applicant must meet conditions similar to those of the NWP program, including prior notification. USACE's typical review time for RGPs is 30 days.

LETTERS OF PERMISSION. Letters of permission are typically processed within 45 days.

INDIVIDUAL PERMITS. Typical processing time for individual permits is 90–180 days unless a public hearing is required or an EIS must be prepared.

Please note: USACE cannot issue an individual permit or verify the use of a general permit until the requirements of the federal Endangered Species Act (FESA), the Coastal Zone Management Act (CZMA), and the National Historic Preservation Act (NHPA) have been met. In addition, USACE cannot issue or verify any permit until a CWA Section 401 water quality certification has been issued. These processes can take longer than the typical USACE permit processing time and may delay receipt or verification of a permit.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The application for a standard permit (ENG Form 4345, Application for a Department of the Army Permit) requests the following information:

- a detailed description of the proposed activity, including the purpose, use, type of structures, composition and quantity of dredged or fill material, and location of the disposal site;

- names and addresses of adjoining property owners, others on the opposite side of streams or lakes, or those whose property fronts on a cove and who may have a direct interest because they could be affected by the project;

- enough detail about the location—street number, tax assessor's description, political jurisdiction, and name of waterway—to allow the site to be easily located during a field visit;

- a list of the status of all approvals and certifications required by federal, state, and local governmental agencies;

- an explanation of any approvals or certifications denied by other governmental agencies; and

- names and addresses of the applicant and the authorized agent (if any), and dates when the project will begin and end.

The applicant must also submit one set of 8-1/2-inch by 11-inch original drawings or good copies that show the location and character of the proposed activity. In addition, three types of additional drawings are required: a vicinity map, plan view, and elevation and/or cross section view. Information regarding the presence of species that are federally listed as threatened or endangered and cultural resources at or near the project site should accompany the permit application.

For nationwide and general permit PCNs (described below), the following information is required:

- the name, address, and telephone numbers of the prospective permittee;

- the location of the proposed project;

- a brief description of the proposed project, the project's purpose, and direct and indirect adverse environmental effects the project would cause; and

- any other NWPs, RGPs, or individual permits used or intended to be used to authorize any part of the proposed project or any related activity.

Specific NWPs have additional requirements, such as a wetland delineation or restoration plan for temporary wetland impacts. ENG Form 4345, which must be signed by the applicant, may be used for an NWP PCN. However, the application must clearly state that it is a PCN and must include all information required under the NWP general condition.

WHAT IS THE FEE?

There is a fee only for an individual permit. A fee of $10 is charged for a permit for a noncommercial activity; $100 is charged for a permit for a commercial or industrial activity. The district engineer will make the final decision as to the amount of the fee. No fees are required for letters of permission, any activities authorized by a general permit, or permits for government agencies.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

GENERAL PERMITS

NATIONWIDE PERMITS. USACE has developed and adopted a set of 44 NWPs in cooperation with concerned agencies. These permits, which authorize certain activities that comply with both general and specific conditions, apply throughout the country.

No permits are actually issued to the project proponent; once the conditions specified in the NWP are met, the project can move forward. However, certain NWPs require prior notification to and an authorization letter from USACE. This process, called a PCN, is required in all cases for some NWPs, and for other NWPs only when certain impact thresholds are exceeded. The USACE district may exercise discretionary authority to override the NWP and require an individual application and review.

The entire set of NWPs is reauthorized every 5 years. The majority of the current set of NWPs was renewed February 11, 1997, and will require reauthorization by February 11, 2002. On June 7, 2000, USACE added five new NWPs and modified six existing NWPs. These permits are scheduled for reauthorization by June 7, 2005, but will be reauthorized by February 11, 2002, so that all the NWPs will be on the same 5-year review cycle.

The NWPs that may be the most relevant to specific CALFED actions are listed below. Sometimes, projects that appear to qualify for specific NWPs may not meet all the conditions applicable to a particular permit. Therefore, USACE should always be consulted to confirm the applicability of projects to NWPs.

- **NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.** This permit applies to harvesting devices and activities (such as pound nets and duck blinds) and to fish attraction devices (such as open-water fish concentrators). This permit may also cover installation of fish screens under a certain size. A PCN is not required.

- **NWP 6. Survey Activities.** This permit applies to survey activities including core sampling, soil survey and sampling, surveys of historic resources, seismic exploratory operations, and plugging of exploratory-type bore holes. (Discharges and structures associated with recovery of historic resources are not authorized.) A PCN is not required.

- **NWP 13. Bank Stabilization.** This permit applies to bank stabilization activities necessary to prevent erosion. Materials used for bank stabilization cannot be placed in special aquatic sites, including wetlands, and the activity cannot impair the flow of surface water into or out of any wetland area. A PCN is required for bank stabilization activities that are more than 500 feet long, or where the volume of stabilization materials placed along the bank below the ordinary high-water mark or the high-tide line exceeds an average of 1 cubic yard per running foot.

- **NWP 14. Linear Transportation Crossings.** This permit applies to fill activities associated with linear transportation facility crossings of waters of the United States, including roadways, railways and trails. For public linear transportation projects, the fill area is limited to one-third of 1 acre and a length of 200 linear feet in tidal waters or nontidal wetlands adjacent to tidal waters, and is limited to one-half of 1 acre in nontidal waters. A PCN is required if the discharge will cause the loss of greater than one-tenth of 1 acre of waters of the United States, or if the discharge is in a special aquatic site.

- **NWP 18. Minor Discharges.** This permit applies to minor activities involving fill material in which the quantity of discharged material and the volume of excavated area does not exceed 25 cubic yards below the ordinary high-water mark or high tide line. The activity must not cause the loss of more than one-tenth of 1 acre of a special aquatic site, including wetlands. A PCN is required for activities that exceed 10 cubic yards below the plane of the ordinary high-water mark or high-tide line, or in special aquatic sites (including wetlands). This NWP cannot be used to authorize the placement of fill material for the purpose of stream diversion.

- **NWP 19. Minor Dredging:** This permit applies to activities involving dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., Section 10 waters) as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States.

- **NWP 27. Stream and Wetland Restoration Activities.** This permit allows discharge activities associated with the restoration of former waters, the enhancement of degraded tidal and nontidal wetlands and riparian areas, the creation of tidal and nontidal wetlands and riparian areas, and the restoration and enhancement of nontidal streams and nontidal open-water areas. Activities qualifying for this NWP are those conducted on:

  - nonfederal public and private lands, in accordance with a binding agreement for wetland enhancement, restoration, or creation between the landowner and the U.S. Fish and Wildlife Service (USFWS) or the Natural Resources Conservation Service (NRCS), or voluntary actions for wetlands restoration, enhancement, and creation documented by NRCS pursuant to NRCS regulations;

  - any federal land;

  - reclaimed lands previously surface mined for coal, in accordance with a Surface Mining Control and Reclamation Act permit; or

– any private or public lands, provided that a PCN is submitted to USACE.

Example activities covered under the provisions of NWP 27 are the removal of accumulated sediment, the removal of undesirable vegetation, and the restoration or creation of riffle and pool stream structures. This NWP is expected to provide Section 404 authorization for a large percentage of CALFED ecosystem restoration actions.

- **NWP 33. Temporary Construction, Access, and Dewatering.** This permit authorizes temporary structures (including cofferdams), work, and discharges necessary for construction activities, access fills, or dewatering of construction sites. The primary activity must be authorized by USACE or the U.S. Coast Guard, or must not be subject to USACE or Coast Guard regulations. Temporary fills must be removed in their entirety when the construction activity is completed, and affected areas must be restored to pre-project conditions. A PCN is required; it must include a restoration plan containing reasonable measures to avoid and minimize impacts on aquatic resources.

In addition to the specific conditions associated with each particular NWP, all activities authorized under NWPs must comply with a set of 26 general conditions, BMPs, and construction practices to minimize adverse environmental impacts. Four of the general conditions require special attention in relation to CALFED actions:

- **Condition 4: Aquatic Life Movements.** Unless the activity's primary purpose is to impound water, no activity authorized under a NWP may substantially disrupt the movement of aquatic life species indigenous to the water body, including species that normally migrate through the area.

- **Condition 9: Water Quality Certification.** Section 401 of the CWA prohibits federally authorized activities (including those authorized under Section 404 and Section 10) from violating state water quality standards. Therefore, for permit compliance, project proponents must obtain a water quality certification from the State Water Resources Control Board (SWRCB) through the regional water quality control boards (RWQCBs) (see "Section 401 of the Clean Water Act" later in this chapter).

- **Condition 11: Endangered Species.** An activity under a NWP must not jeopardize the continued existence of a species listed as threatened or endangered under FESA. In addition, it must not destroy or adversely modify areas designated as critical habitat. If the activity may affect a listed species or its habitat, USACE must complete the consultation process required by Section 7 of FESA. Once USACE has successfully completed the consultation, the activity can proceed under a NWP. (See "Federal Endangered Species Act, California Endangered Species Act, and Natural Community Conservation Planning Act", earlier in this chapter.)

- **Condition 12: Historic Properties.** The permit applicant must notify USACE if the proposed activity may adversely affect historic properties (e.g., archaeological sites, historic sites, historic structures) that are included on or are eligible for listing on the National Register of Historic Places (NRHP), as required by Section 106 of the NHPA. USACE must provide the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) with an opportunity to comment on the proposed activity and must consider any recommendations made by the SHPO or ACHP. Significant unavoidable impacts on important cultural resources would preclude issuance of a permit. (See "National Historic Preservation Act" later in this chapter.)

REGIONAL GENERAL PERMITS. A USACE division or district engineer may issue an RGP for a type of activity whose impacts are individually and cumulatively minimal and that does not require further authorization by an individual permit. As with NWPs, the USACE district will determine and add appropriate conditions to the RGP to protect the public interest. The district may override the RGP and require an individual permit application and review if it determines that concerns about the aquatic environment dictate such actions. The USACE district may revoke an RGP if it determines the permit to be contrary to the public interest. RGPs are issued for a period of no more than 5 years.

The following RGPs issued by USACE's Sacramento District may be the most relevant to specific CALFED actions during Stage 1.

- **RGP 08, Fill for Spawning Areas.** Issued September 21, 1998; expires September 21, 2003. This RGP authorizes the California Department of Fish and Game (DFG) or its authorized representative to place fill material below the ordinary high-water elevation (in tidal waters, below the mean high elevation) for rehabilitation of salmon spawning areas in the Sacramento-San Joaquin River system.

- **RGP 14, Sacramento-San Joaquin River Delta Dredging for Levee Maintenance.** Issued January 1, 1996; expires January 1, 2001. (This RGP is currently under revision.) This RGP authorizes entities eligible under the Delta Flood Protection Act of 1988 (Senate Bill 34), as well as other public agencies or littoral land owners doing similar work, to dredge below the mean high-water line to obtain material for maintenance and repair of existing serviceable levees in navigable waters of the Sacramento-San Joaquin River Delta. This general permit is intended to be used in tandem with NWP 03, Maintenance, which would authorize the actual placement of the fill for the levee repair.

STANDARD PERMITS

LETTERS OF PERMISSION. USACE's Sacramento District may issue letters of permission to authorize certain fill activities or work within district boundaries having a minimal impact on the aquatic ecosystem. A letter of permission is a type of standard permit for an individual action, designed to expedite the permitting process for noncontroversial projects whose applicants perform effective preapplication coordination, formulate projects that comply

with the Section 404(b)(1) Guidelines and other program objectives, and propose effective mitigation for unavoidable impacts.

Letters of permission are subject to the same compliance requirements as an individual permit (see below). They may be issued through an abbreviated processing procedure that includes preapplication coordination with federal and state fish and wildlife agencies and an evaluation of the public interest.

INDIVIDUAL PERMITS. Projects that involve discharge activities in waters of the United States but that are not eligible for exemptions, a NWP, RGP, or letter of permission must obtain an individual permit. Individual permits are issued to a single entity (e.g., an agency, joint-power agency, individual, or company) to authorize specific activities.

The steps for obtaining an individual permit are as follows:

1. The project proponent must submit a completed application (ENG Form 4345, Application for a Department of the Army Permit). In addition to the application, the permit applicant must provide an alternatives analysis as required by the U.S. Environmental Protection Agency's (EPA's) Section 404(b)(1) Guidelines along with information about federally listed species and cultural resources that may be present in or near the project area.

2. Once a complete application is received, USACE issues a public notice for a comment period, usually 30 days. Copies of the public notice are distributed via U.S. Mail or email to local, State, and federal agencies, adjacent landowners, and other interested parties who have notified USACE that they wish to receive public notices. The public notice is also posted on USACE's web site.

   During this time, USACE will also initiate formal endangered species consultation with USFWS or the National Marine Fisheries Service (NMFS) and, as needed, will conduct the necessary review and coordination regarding any cultural resources that are in the permit area. The applicant should have applied to the RWQCB to obtain water quality certification, and to the San Francisco Bay Conservation and Development Commission (BCDC) for a consistency determination if the proposed project is within the BCDC's jurisdiction.

   USACE may require the permit applicant to provide supporting documentation along with the basic application to assist in the decision-making process.

3. Once comments are received, the applicant is notified of any objections to the project or outstanding issues, and is given an opportunity to respond.

4. The culmination of the Section 404 approval process is the preparation of a NEPA document, usually an environmental assessment, and a final decision on the permit application. When it issues an individual permit for the discharge of dredged or fill material, USACE must document that the project complies with the Section 404(b)(1)

Guidelines, which state that there must be no practicable alternatives to the proposed discharge that would have fewer adverse impacts on the aquatic ecosystem. According to the guidelines, when the discharge site is a special aquatic site (e.g., a wetland) and the proposed activity is not water-dependent, a less damaging alternative that does not affect a special aquatic site is presumed to exist. The feasibility of an alternative is determined, in light of overall project purposes, as a function of cost, technical, and logistical factors, including the availability of the alternative to the project proponent at the time of market entry. The applicant bears the burden of demonstrating that no practicable alternatives exist that will meet the project purpose and result in less damage to the environment.

The decision by USACE to issue an individual permit for a project is based on an evaluation of the probable impacts of the proposed activity, analyzed according to the Section 404(b)(1) Guidelines, and the effects of the proposed activity on the public interest.

USACE may add special conditions to the permit to ensure the protection of sensitive biological or cultural resources, to require habitat mitigation and monitoring, or to ensure that the project is in the public interest.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

A Department of the Army permit often requires compliance with several other regulations.

- **NEPA.** Compliance with NEPA is required for all permits issued by USACE. If no other federal lead agency is identified for a project, USACE assumes lead agency status for the preparation of a NEPA environmental document (see "National Environmental Policy Act" earlier in this chapter). However, NEPA compliance for general permits is performed at the time the permit is issued and no separate NEPA compliance is necessary for each separate action authorized under the general permit.

- **Section 401 of the CWA.** To issue a permit under Section 404, USACE must ensure that the discharge will not violate state water quality standards. Therefore, in California, project proponents must obtain a water quality certification from RWQCBs in accordance with Section 401 of the CWA (see "Section 401 of the Clean Water Act" later in this chapter).

- **FESA.** If the proposed project may affect a species listed under the FESA, USACE must complete the consultation process required by Section 7 of FESA (see "Federal Endangered Species Act, California Endangered Species Act, and Natural Community Conservation Planning Act" earlier in this chapter). If another federal lead agency has been identified, that agency may conduct the primary consultation.

- **Section 106 of the NHPA.** If the proposed project may adversely affect historic properties that are included or eligible for listing on the NRHP, USACE must provide

the SHPO and ACHP with an opportunity to comment on the proposed activity and must consider any recommendations made by the SHPO or ACHP (see "National Historic Preservation Act" later in this chapter). If another federal lead agency has been identified, that agency would conduct the consultation.

- **CZMA.** For projects within the coastal zone, compliance with Section 404 requires compliance with the CZMA (see "Coastal Zone Management Act" later in this chapter).

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the Section 404 process for CALFED actions.

- **Avoid impacts through early consultation.** Starting the Section 404 process early in the project planning process addresses two different needs. First, Section 404 and the Section 404(b)(1) Guidelines state that avoidance must be the first approach in addressing potential impacts on waters of the United States. If wetlands on the project site are identified early enough in the project design stage, some or all wetland impacts may be avoided through project redesign. USACE will require documentation of avoidance of wetlands during the Section 404 letter of permission and individual permitting process (although this is also a requirement for general permits, there is less of a need to proactively demonstrate avoidance). In addition, starting the Section 404 process early enables the applicant to include measures in the project description designed to avoid wetland impacts.

  Second, by contacting USACE early in the project design process, the project applicant may be able to identify ways to modify the project to avoid the need for a Section 404 permit or to make the project eligible for an expedited Section 404 permitting process. Although not required for most types of permits, a preapplication meeting with USACE, EPA, and USFWS (and, as appropriate, NMFS, DFG, other relevant State resource agencies, and local and regional agencies with authority over land use at the project location) is encouraged; such a meeting allows the attending resource agencies to contribute information that may expedite the permitting process. At this meeting, the resource agencies may suggest that the project proponent modify the project or incorporate mitigation features that will likely be required as part of the formal permitting process. By incorporating these features into the project early in the process, delays caused by the need for redesign of the project late in the process can be avoided.

- **Minimize impacts.** The Section 404(b)(1) Guidelines and the USACE and EPA memorandum of agreement (MOA) regarding habitat mitigation and monitoring, dated November 15, 1989, on wetlands mitigation require that projects minimize negative effects on wetlands for those that cannot first be avoided. According to the MOA, the proper priority sequence in project design is:

1. Avoid adverse effects on wetlands.

2. If avoiding adverse effects is not practicable, minimize effects on wetlands to the extent practicable.

3. If avoiding and minimizing effects is not practicable, compensate for effects on wetlands to replace the function and value of the wetlands.

The Section 404(b)(1) Guidelines and the MOA state that if the project purpose cannot be achieved without affecting jurisdictional areas, the project proponent should strive to minimize disturbance to special aquatic sites and the acreage affected within the jurisdictional boundaries.

When projects can be designed to avoid impacts on wetlands, the need for a Section 404 permit can be eliminated or the use of NWPs can sometimes be possible. When the project description can be designed to include compensatory mitigation for impacts on wetlands, processing of individual permits can be smoother if the applicant has demonstrated that avoidance and minimizing impacts have been considered before mitigation was evaluated.

- **Comply with USACE conditions.** Compliance with Section 404 requires compliance with several other environmental laws and regulations (as described above). When the project proponent works with the pertinent resource agencies early in the process and complies with these other laws and regulations before submitting an application to USACE, the Section 404 permitting process can be expedited. Special attention should be paid to the following:

  – consultation requirements in Section 7 of FESA, for effects on threatened and endangered species;

  – coordination requirements in Section 106 of the NHPA, for effects on cultural resources; and

  – certification requirements in Section 401 of the CWA, for water quality effects.

- **Use specialized CALFED processes.** If the CALFED agencies working with USACE develop a specialized letter of permission process or special RGPs, use of these processes can result in much faster processing times for permits.

- **Tier from the programmatic memorandum of understanding (MOU).** The Programmatic Record of Decision (ROD) for the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR) includes a CWA Section 404 MOU signed by the U.S. Bureau of Reclamation, EPA, USACE, and California Department of Water Resources (DWR). Under the terms of the MOU, when a project proponent applies for a Section 404 individual permit for CALFED projects, the proponent is not required to re-examine

program alternatives already analyzed in the PEIS/EIR. USACE and EPA will focus on project-level alternatives that are consistent with the PEIS/EIR when they select the least environmentally damaging practicable alternative at the time of a Section 404 permit decision, unless new information is submitted that indicates that the programmatic-level information is incorrect or incomplete. USACE must consult with the relevant agencies and interested stakeholders and assess whether new information or circumstances warrant additional review of programmatic alternatives and program commitments.

As an example, consider a CALFED project to construct and operate a new surface water reservoir. In preparing the Section 404(b)(1) alternatives analysis, the project proponent would not be required to consider increases in water use efficiency as an alternative to surface water storage, as long as the water use efficiency commitments included in the ROD were met. The project proponent would be required to analyze only site-specific alternatives that met the site-specific purpose and need statement. These could include alternative reservoir locations or sizes. However, any beneficiaries of water supplies from the project would need to demonstrate compliance with the applicable urban or agricultural council agreements and applicable state laws relative to water use efficiency.

NATIONAL WILD AND SCENIC RIVERS ACT

OVERVIEW

Congress enacted the National Wild and Scenic Rivers Act (NWSRA) in 1968. The NWSRA establishes a National Wild and Scenic Rivers System (NWSRS) and prescribes the methods and standards through which additional rivers may be identified and added to the system. The NWSRA authorizes the:

- selection of certain rivers of the nation that possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar resources;
- preservation of the selected rivers' free-flowing condition by providing protection against federally licensed dams, diversions, and other on-river development on designated river segments; and
- protection of the rivers' local environments by setting aside the riparian corridor within one-quarter mile of the ordinary high-water mark, and restricting development on public lands within that corridor.

The NWSRA establishes three classes or sections of rivers:

- "wild" river areas, which are characterized as free of impoundments and generally inaccessible except by trail, with essentially primitive watersheds or shorelines and unpolluted waters;
- "scenic" river areas, which are characterized as free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by road; and
- "recreational" river areas, which are characterized as readily accessible by road or railroad, and which may have some development along their shorelines, and may have undergone some impoundment or diversion in the past.

Selected rivers and streams have been placed into the National Rivers Inventory by acts of Congress, and are designated "Wild and Scenic Rivers" (WSRs). Other rivers and streams have been congressionally authorized for study as potential additions to the NWSRS, and are designated "Study Rivers" (SRs). Four administering agencies of the U.S. Department of the Interior are responsible for managing designated WSRs or congressionally authorized SRs:

- Bureau of Land Management (BLM),
- National Park Service (NPS),
- U.S. Fish and Wildlife Service (USFWS), and
- U.S. Forest Service (USFS).

Refer to Appendix C for a list of WSRs in California and their administering agencies.

WSRs and SRs must be considered during project planning, and project impacts must be identified in any environmental assessment (EA) or environmental impact statement (EIS). If there are no impacts on WSRs or SRs, this fact should be noted in a NWSRA summary in the EA or EIS. There is no federal requirement to consider State-listed WSRs and streams or unique areas during project planning or in an EA or EIS. However, it is recommended that any impacts on rivers and streams that are State-listed or proposed for listing and on unique areas be considered and addressed at levels comparable to consideration given to rivers and streams protected by the NWSRA.

WHO NEEDS TO COMPLY?

NWRSA Section 7 requirements apply to all CALFED actions that involve federal assistance in the construction of water resources projects that may affect the free-flowing characteristics, the scenic value, or natural resources of a WSR or SR. Any project or construction located within the bed or banks of a designated WSR or SR, or located below, above, or on any WSR's or SR's stream tributary is considered a water resources project under the NWSRA.

Generally, Section 7 compliance will be required for any CALFED project that will directly and adversely affect a WSR or SR, and:

- will be carried out or at least partially funded by a federal agency;
- will require U.S. Army Corps of Engineers (USACE) authorization (e.g., approval in accordance with Section 10 of the Rivers and Harbors Act of 1899 or Section 404 of the Clean Water Act [CWA]);
- will require Federal Energy Regulatory Commission authorization (e.g., approval in accordance with Sections 4(e) and 4(f) of the Federal Power Act, 16 USC 797); or
- will require any other federal authorization before, during, or after construction of a water resources project.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Once a written notice has been submitted to the appropriate administering agency, the agency will attempt to make a determination of compliance for the proposed project within 60 calendar days of receiving the notice. A determination of compliance generally takes only a few weeks. However, the administering agency is authorized to make the determination sooner or later than 60 days depending on the complexity of the project. In addition, the agency's current workload may determine the time needed for the agency to complete the determination process.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Generally, the federal agency that constructs, authorizes, or provides federal assistance to a CALFED water resources project that is located on or affects any portion of a WSR or SR is responsible for providing a written notice to the appropriate administering agency. For example, if a CWA Section 404 permit were required, USACE would be responsible for notifying the administering agency. If appropriate, the applicant (if different from the federal agency) may facilitate the review process (see "What Are the Opportunities for Streamlining This Process?" below). The written notice must include the following information:

- a full, technically accurate description of the entire proposed activity, including:
  - name and location of the affected designated WSR or SR;
  - project purpose and final project goal;
  - description of the project location and proposed activity or construction; and
  - nature of the permit, assistance, or other authorization proposed to be issued;
- copies of any draft or final federal licenses, permits, and agreements required for actions associated with the proposed activity (e.g., a preconstruction notification for a USACE nationwide permit);
- copies of any plans, maps, and environmental studies, assessments, or EISs;
- a list of agencies participating in the NEPA process as lead or responsible agencies;
- a copy of the NEPA finding of no significant impact or record of decision, if already prepared; and
- a detailed description of any river-specific resources that may be impacted, and proposed mitigation to avoid adverse impacts.

WHAT IS THE FEE?

There is no fee to comply with NWSRA Section 7.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

The administering agency (BLM, NPS, USFWS, or USFS) determines the effects of a proposed water resources project in compliance with NEPA. Therefore, the applicant should request a determination for NWSRA Section 7 compliance while completing the NEPA process, if applicable, and when applying for a federal authorization (e.g., Section 404 or Section 10 authorization) that triggers the need for Section 7 compliance. When the appropriate administering agency receives a request for compliance determination, it will issue either a letter of consent, stating that the project will not have a direct and adverse effect on the resources for which the river was designated, or a letter that denies consent. If consent is denied, the

administering agency may recommend measures to eliminate adverse effects, and the applicant may submit revised plans for consideration.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Because NWSRA Section 7 compliance determination is a discretionary action, the administering agency must analyze the proposed project in accordance with NEPA. If another federal agency has already completed NEPA compliance when the administering agency receives a request for a Section 7 compliance determination, the administering agency generally uses the previous NEPA document to meet its NEPA review requirement.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the process of NWSRA compliance for CALFED actions.

- **Avoid and minimize impacts on WSRs and SRs.** CALFED projects should avoid or minimize direct and adverse effects on the resources for which the rivers have been designated as WSRs or SRs. To the extent possible, CALFED actions should be designed to avoid or minimize activities within one-quarter mile of the ordinary high-water mark of a WSR or SR.

- **Address constraints dictated by the NWSRA.** The applicant should address any limitations to the project design dictated by the NWSRA (e.g., riprap is specifically prohibited).

- **Coordinate the development of the written notice.** As noted earlier, the federal agency that constructs, authorizes, or provides federal assistance to a CALFED water resources project is responsible for providing a written notice to the administering agency. However, with the federal agency's approval, the applicant (if different from the federal agency) may facilitate the review process by doing either of the following:

  – developing a draft of the written notice, which the federal agency would finalize and forward to the administering agency; or

  – developing the draft and final written notice and coordinating the review process between the federal agency and the administering agency.

- **Provide complete, detailed information.** As with many other permitting processes, preparing a complete written notice, including a detailed and relatively final project description and a summary of NEPA compliance coordination, can greatly help expedite the Section 7 review process. When the need for a Section 404 or Section 10 permit triggers the need for a Section 7 compliance determination, the Section 404/Section 10 application package can be used in the written notice as well.

- **Coordinate early with the administering agency and other resource agencies.** The applicant should contact the administering agency early in the project design process to determine which activities may be prohibited by the NWSRA. In addition, the applicant should include the administering agency with the other resource agencies early in the NEPA review process, especially if there are controversial issues.

EXECUTIVE ORDER 11988 (FLOODPLAIN MANAGEMENT)

OVERVIEW

Executive Order 11988 is a flood hazard policy for all federal agencies that manage federal lands, sponsor federal projects, or provide federal funds to state or local projects. It requires that all federal agencies take necessary action to reduce the risk of flood loss; restore and preserve the natural and beneficial values served by floodplains; and minimize the impact of floods on human safety, health, and welfare. Specifically, Executive Order 11988 dictates that all federal agencies avoid construction or management practices that would adversely affect floodplains unless that agency finds that there is no practical alternative and the proposed action has been designed or modified to minimize harm to or within the floodplain.

WHO NEEDS TO COMPLY?

Executive Order 11988 requirements apply to all CALFED actions that are located on federal land, sponsored by a federal agency, or funded with federal monies and that may affect a floodplain.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Compliance with Executive Order 11988 is usually incorporated into the NEPA process. See "National Environmental Policy Act" earlier in this chapter for a description of time frames for preparation of environmental impact statements (EISs) and environmental assessments.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Before implementing a proposed action, federal agencies are required to determine whether the action would occur in a floodplain. This determination must be made according to a floodplain map provided by the Department of Housing and Urban Development or, if available, a more detailed map of an area. If the federal agency proposes an action in a floodplain, it must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the agency finds that the only practicable alternative requires that the project be sited in a floodplain, it must:

- design or modify its action to minimize potential harm to or within the floodplain; and
- prepare and circulate a notice, not to exceed three pages in length, that includes the following:
  - the reasons why the action is proposed to be located in a floodplain;

- a statement indicating whether the action conforms to applicable State or local floodplain protection standards; and

- a list of alternatives considered.

The agency should send the notice to the State Clearinghouse. The information in this notice is often provided in a chapter on consultation and coordination in the NEPA document for the project.

WHAT IS THE FEE?

There is no fee to comply with Executive Order 11988. There is, however, a fee for NEPA compliance. Please see the section on NEPA compliance for details.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

No permits or approvals are required for compliance with Executive Order 11988. To demonstrate compliance, the NEPA lead agency usually provides documentation in the NEPA document that indicates that the proposed action has been designed to minimize flood hazard potential. In addition, the agency must provide an opportunity for early public review by those who may be affected, and include its findings in its environmental document.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Compliance with Executive Order 11988 is usually incorporated into the NEPA process. This executive order does not trigger any other environmental compliance requirements.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following step is recommended to simplify and streamline compliance with Executive Order 11988 for CALFED actions.

- **Use the mitigation strategies described in the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR).** CALFED has complied with Executive Order 11988 at a programmatic level by discussing the potential effects of the Preferred Program Alternative on flooding and by recommending mitigation strategies. However, project-level determinations will be required as well. CALFED should incorporate the mitigation strategies identified in the PEIS/EIR into its project-level documents.

EXECUTIVE ORDER 11990 (PROTECTION OF WETLANDS)

OVERVIEW

Executive Order 11990 is an overall wetlands policy for all agencies that manage federal lands, sponsor federal projects, or provide federal funds to state or local projects. The order requires federal agencies to follow avoidance, mitigation, and preservation procedures with public input before they propose new construction in wetlands. When federal lands are proposed for lease or sale to nonfederal parties, Executive Order 11990 requires that the lease or conveyance include restrictions to protect and enhance the wetlands on the property. Executive Order 11990 can restrict the sale of federal land containing wetlands; however, it does not apply to federal discretionary authority for nonfederal projects (other than funding) on nonfederal land.

WHO NEEDS TO COMPLY?

Executive Order 11990 requirements apply to all CALFED actions that are located on federal land, sponsored by a federal agency, or funded with federal monies and that may affect wetlands. Compliance with Executive Order 11990 is not required if the only federal action is the issuance of a permit by a federal agency to a private party for activities that involve wetlands on nonfederal property. Therefore, actions that are funded by CALFED solely with State funds and undertaken by private parties on nonfederal land need not comply.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Compliance with Executive Order 11990 is usually incorporated into the NEPA process. See the "National Environmental Policy Act" earlier in this chapter for a discussion of compliance time frames.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Before implementing an action that is located in a wetland or may affect a wetland, federal agencies must demonstrate that there is no practical alternative and the proposed action includes all practical measures to minimize harm to the wetlands. This information is often provided in a chapter on consultation and coordination in the NEPA document for the project.

WHAT IS THE FEE?

There is no fee to comply with Executive Order 11990. There are, however, costs associated with NEPA compliance. Please see the section on NEPA compliance for details.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

To demonstrate compliance with Executive Order 11990, the agency must design the proposed action to minimize harm to wetlands, provide the opportunity for early public review, and include its findings in its environmental document.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Executive Order 11990 does not trigger any other environmental compliance requirements. However, projects requiring compliance with Executive Order 11990 (except U.S. Army Corps of Engineers [USACE] projects) are likely to require a permit under Section 404 of the Clean Water Act. The assessment of effects of such projects on wetlands should be closely coordinated with USACE's Section 404 permitting process.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline compliance with Executive Order 11990 for CALFED actions.

- **To the extent possible, design proposed projects to avoid wetlands or to minimize activities in wetlands.**

- **Use the mitigation strategies described in the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR).** The PEIS/EIR addresses effects on wetlands at a programmatic level and identifies mitigation strategies for potentially significant adverse impacts on wetlands. If this mitigation is incorporated into the proposed project, project-specific compliance with Executive Order 11990 may not be necessary. In addition, compliance may also be achieved in coordination with Section 404 compliance.

FISH AND WILDLIFE COORDINATION ACT

OVERVIEW

The Fish and Wildlife Coordination Act (FWCA) provides that fish and wildlife resources are to receive equal consideration and be coordinated with other features of Federal projects and projects carried out under Federal permits and licenses that control or modify any bodies of water for any purpose. The FWCA requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) and the appropriate state fish and wildlife resource agency [in California, the California Department of Fish and Game (DFG)] before undertaking or approving projects. As applicable, the National Marine Fisheries Service (NMFS) also should be consulted. The aim of consultation is to conserve fish and wildlife resources by preventing their loss or damage, and by developing and improving their resources.

WHO NEEDS TO COMPLY?

The FWCA applies to any proposal or authorization to impound, divert, deepen the channel, or otherwise control or modify streams or other bodies of water (excluding impoundments less than 10 acres in area) that are constructed, licensed or permitted by any federal department or agency.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Compliance with the FWCA should occur parallel with and as an integral part of project planning, design, and construction. This should begin with reconnaissance and feasibility study phases, and continues through project approval and construction. Compliance with the FWCA may be carried out at the same time as, and be inter-related with, activities under NEPA and the Endangered Species Act.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The action agency should provide the USFWS and DFG (and NMFS, as applicable) with early notification of potential projects, and should identify project goals and objectives for purposes of interagency consultation. The action agency should continue interagency consultation throughout the reconnaissance, feasibility, and design, and construction stages of projects, and provide appropriate project documents and other information regarding project features and structures, and affects on fish and wildlife resources at each stage. The USFWS and DFG may adopt data and studies, or portions thereof, form these planning processes and documents that are useful for FWCA investigations and reporting. The USFWS may also conduct studies and investigations for the purposes of evaluating the project.

WHAT IS THE FEE?

There is no fee associated with compliance with the FWCA. However, the FWCA authorizes federal action agencies to fund the USFWS to conduct all or part of the investigations required for compliance. Provision of such funding is critical and often necessary to timely review and to the preparation of the report by the USFWS.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

Federal agencies must contact and consult with the USFWS and DFG on projects meeting the aforementioned criteria with a view to the conservation of fish and wildlife resources through "effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation." The NMFS should be included, as applicable. Interagency coordination should include early involvement in project planning so that fish and wildlife resources issues can be addressed before irretrievable commitments are made to a particular course of action. FWCA involvement includes assisting the action agency in developing alternatives and evaluating their impacts, reviewing proposals, discussing alternatives, assisting in design and construction, and developing mitigation measures.

The reports and recommendations of the Secretary of the Interior (represented by the USFWS) and DFG must be made an integral part of any report submitted by the federal action agency to Congress or other authority for project approval. FWCA reports and recommendations, based on surveys and investigations conducted by the USFWS, DFG, and NMFS; and/or data and studies adopted from appropriate planning processes, are prepared to determine project impacts on fish and wildlife resources, and to recommend means and measures to mitigate impacts and provide for preservation, development and enhancement of these resources.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Compliance with the FWCA does not trigger other environmental compliance needs. However, interagency coordination under the FWCA typically addresses fish and wildlife issues associated with NEPA and the Endangered Species Act.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The action agency should engage the USFWS, DFG, and NMFS as early in the planning process as possible to identify fish and wildlife concerns and ensure that projects are not delayed as a result of overlooked information and concerns.

The action agency should address USFWS, DFG, and NMFS concerns in project planning and reporting (e.g., Reconnaissance and Feasibility Study reports and NEPA documents), to ensure equal consideration of fish and wildlife, and to limit the need for additional FWCA investigations and reporting. FWCA report summarizing findings and recommendations may be considerably abbreviated when: (1) the USFWS is involved early and completely in the planning process to provide input along the way through Planning Aid reports; (2) NEPA documents and other planning vehicles contain adequate informationand analyses of

fish and wildlife resources and associated project impacts; and (3) mitigation is discussed to the satisfaction of the USFWS, DFG, and NMFS.

Proposed actions should tier from FWCA compliance with the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report which reads:

> Because of this extensive coordination, the incorporation of USFWS's recommendations, and the programmatic nature of the CALFED Program, USFWS and NMFS believe that the requirements of Section (b)(2) of the FWCA have been fulfilled. However, future CALFED Program actions that tier from the Programmatic EIS/EIR have not fulfilled the requirements of Section (b)(2) of the FWCA. Separate FWCA reports will need to be completed for those Phase III actions. USFWS and NMFS will complete FWCA reports for appropriate Phase III actions, presenting their agency's recommendations to avoid, minimize, and mitigate project impacts on fish and wildlife resources.

NATIONAL HISTORIC PRESERVATION ACT

OVERVIEW

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to evaluate the effects of federal undertakings on historical, archaeological, and cultural resources. An agency is required to coordinate with the State or Tribal Historic Preservation Officer (SHPO/THPO) and other interested parties throughout the Section 106 process. The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that serves as a primary policy advisor to the president and Congress on historic preservation matters. This 20-member board is responsible for overseeing how Section 106 reviews are carried out. The ACHP have issued regulations to guide Section 106 review.

Federal agencies must initiate Section 106 review. Most of the review takes place between the agency and the SHPO/THPO. The SHPO is appointed by the governor and coordinates the State's historic preservation program. Each federally recognized tribe may designate a THPO for Section 106 consultation when tribal lands are involved.

To successfully complete Section 106 review, Federal agencies must:

- Determine if Section 106 of NHPA applies to a given project, and, if so, initiate the review;
- Gather information to decide which properties in the project area are listed on or eligible for the National Register of Historic Places;
- Determine how historic properties might be affected;
- Explore alternatives to avoid or reduce harm to historic properties; and
- Reach agreement with the SHPO/THPO (and the ACHP in some cases) on measures to deal with any adverse effects or obtain advisory comments from the ACHP, which are sent to the head of the agency.

WHO NEEDS TO COMPLY?

NHPA requirements apply to all CALFED actions that are located on federal land, sponsored by a federal agency, permitted by a federal agency, or funded with federal monies.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

There are no specific time restrictions to complete this process as a whole. Typically, agency preparation of proper documentation is the lengthiest part of the process. The agency needs to consult with the SHPO/THPO regarding public participation in Section 106 review. Once an agency completes the appropriate documentation and submits its Section 106 findings to the SHPO/THPO, the SHPO/THPO has 30 days to review and comment. The ACHP has an

additional 15 days to review the findings if requested by the agency, the SHPO/THPO, or if the ACHP decides on its own to review the findings. Comments from SHPO and the ACHP, however, may result in a determination that additional documentation or other requirements should be completed. The NHPA compliance process may be undertaken at the same time as the NEPA compliance process.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

See "What Does the Application and Evaluation Process Entail?" below.

WHAT IS THE FEE?

There is no application fee to comply with the NHPA.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

The responsible federal agency first determines whether it has an undertaking that could affect historic properties, which are properties that are included in or meet the criteria for the National Register of Historic Places (NRHP). If so, it must identify the appropriate SHPO/THPO with whom to consult during the process. The agency should also plan to involve the public and Indian tribes and to identify other potential consulting parties.

However, before consulting with the SHPO/THPO, the federal agency should review any programmatic agreements that may have been entered into by the agency and the SHPO/THPO and ACHP. The programmatic agreement may contain the appropriate mitigation that, if incorporated into the proposed project, may make further Section 106 compliance unnecessary. If the agency determines that it has no undertaking that could affect historic properties, the agency has no further Section 106 obligations.

If the agency's undertaking could affect historic properties, there are four basic steps in the Section 106 process (described below and shown in Figure 7) during which the federal agency works with the SHPO to assess the potential effects of proposed actions:

- Step 1: Initiation of the Section 106 Process pursuant to 36 CFR 800.3.
- Step 2: Identification of Historic Properties pursuant to 36 CFR 800.4.
- Step 3: Assessment of Adverse Effects pursuant to 36 CFR 800.5.
- Step 4: Resolution of Adverse Effects pursuant to 36 CFR 800.6.

STEP 1: INITIATION OF THE SECTION 106 PROCESS

The federal agency determines whether the proposed action is an undertaking as defined in 800.16(y) and if it is a type of activity that has the potential to cause effects on historic properties. The agency should coordinate steps in the Section 106 process with those procedures and document preparation reviews that comply with NEPA, Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, and Section 4 (f) of the Department of Transportation Act, pursuant to

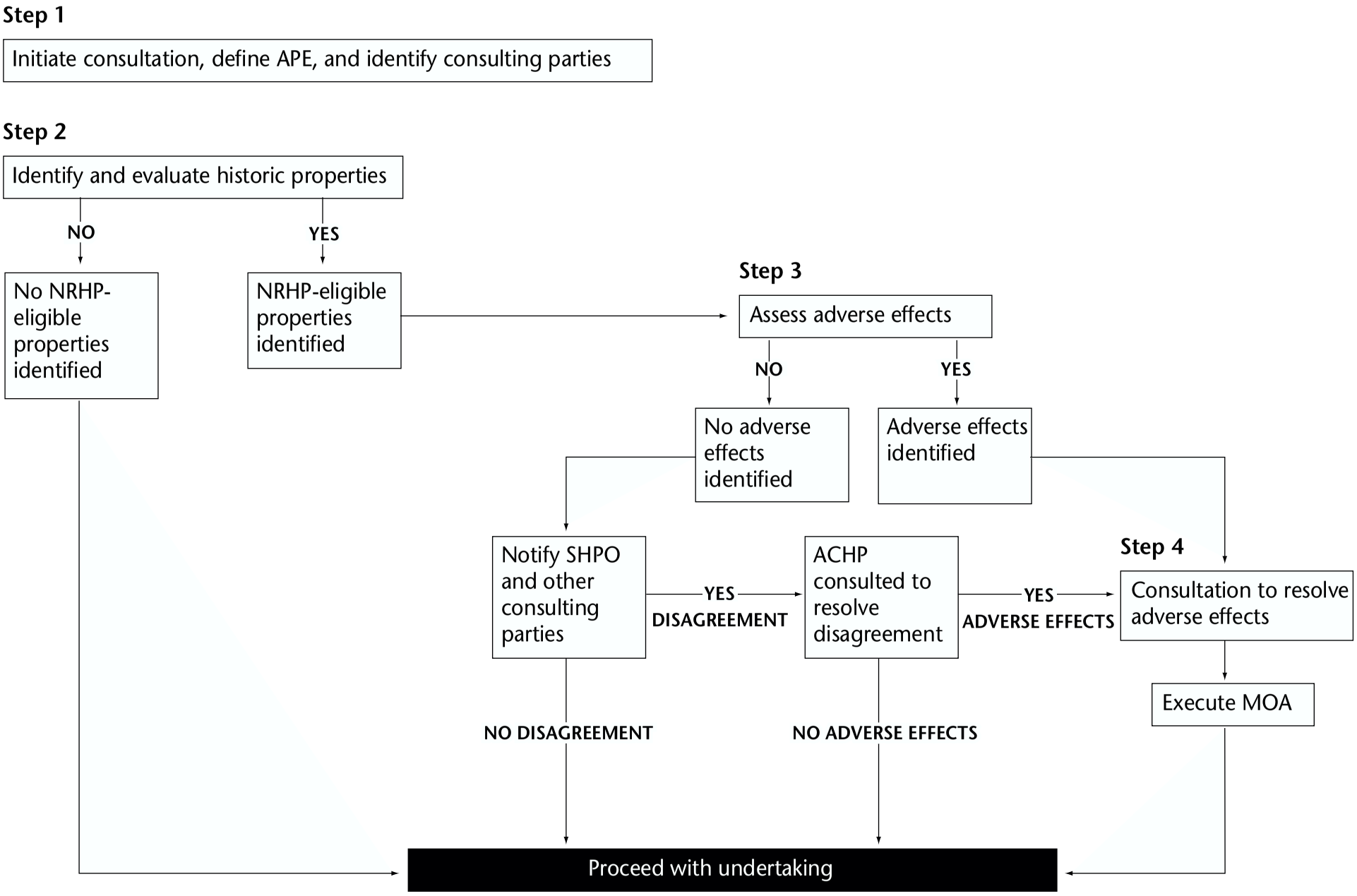


Figure 7
Basic Steps of Section 106 Review

36 CFR 800.3. It is in this step of the Section 106 process that the agency identifies the appropriate SHPO/THPO as well as other agencies that should be consulted and initiate consultation.

STEP 2: IDENTIFICATION OF HISTORIC PROPERTIES

The scope of the effort to identify historic properties is determined as part of the consultation process, initiated in Step 1. Normally, the steps for identifying historic properties are:

- Determine and document the Area of Potential Effects (APE).
- Review existing information on historic properties within the APE, including data about possible historic properties not yet identified.
- Seek information from consulting parties or individuals likely to have information about historic properties in the APE and identify issues related to the potential effects of the undertaking on historic properties.
- Gather information from Indian tribes about sites of religious or cultural significance to them on or off tribal lands. This information is subject to confidentiality measures listed in the regulations.
- Make a good faith effort to identify historic properties in the APE. This typically includes, but is not necessarily limited to, consultation with Indian tribes, oral history interviews, records searches, background research, interviews, and field surveys.
- Evaluate the significance of identified properties by applying the National Register criteria as defined in 36 CFR part 63 in consultation with the SHPO/THPO and any Indian tribe that attaches religious and cultural significance to the identified properties.
- Determine if a property is eligible for the National Register and Section 106. Follow guidelines established in the regulations if consulting parties disagree with agency determination that property is not eligible. (See Assessment of Adverse Effects.)

Federally-recognized Indian tribes must be consulted to determine if sites of religious or cultural significance to them are present in the APE. The lead Federal agency should be the contact with tribes. Tribes are initially contacted by registered letter and a follow-up telephone call or a repeat registered letter requesting their participation in the Section 106 process. The letter, addressed to the tribal chairperson, should describe the proposed undertaking, provide a delineation of the APE, make a request for information regarding places of religious or cultural significance within the APE, provide a confidentially clause to protect any information provided, and request a point of contact. Additional consultation may be necessary, depending on the

outcome of the initial contacts. Documentation of this consultation is included in the inventory report.

In California, non-Federally recognized Indian tribes may be identified by contacting the Native American Heritage Commission. Non-Federally recognized Indian tribes may participate in the Section 106 process as "additional consulting parties."

As part of this process, a project proponent or permit applicant other than the federal agency may prepare a cultural resources inventory report for consideration and processing by the federal agency. In such cases, the inventory shall be submitted to the lead federal agency for review. This agency is responsible for submitting the inventory report to the SHPO/THPO and other interested parties.

STEP 3: ASSESSMENT OF ADVERSE EFFECTS

Once historic properties have been identified and found to meet NRHP criteria, the federal agency, in consultation with the SHPO/THPO, shall determine if the proposed undertaking will adversely affect the historic properties by applying the criteria of adverse effect (36 CFR 800.5).

If the agency proposes a finding of no adverse effect, the agency shall notify all consulting parties. If the SHPO/THPO agree with the finding, the undertaking may proceed. If any consulting parties disagree with the finding, additional consultation shall be initiated between the parties or the ACHP shall be requested to review the finding.

If the agency proposes a finding of adverse effect, the agency shall consult further to resolve the adverse effect pursuant to 36 CFR 800.6 and shall notify the ACHP of the finding of adverse effects.

STEP 4: RESOLUTION OF ADVERSE EFFECTS

In consultation with the SHPO/THPO and other consulting parties, the agency shall develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties. Once agreement is reached on ways to avoid, minimize, or mitigate adverse effects on historic properties, a Memorandum of Agreement (MOA) shall be executed which evidences the agency's compliance with Section 106 of the NHPA. The agency shall ensure that the undertaking is carried out in accordance with the MOA. A two-party MOA may be developed between the SHPO and the agency, if the ACHP decides not to participate, pursuant to 36 CFR 800. Other consulting parties, such as Indian tribes, may be invited to be signatories to the MOA as well.

The ACHP shall be invited to participate in consultation when the agency wants the ACHP participation, when the undertaking has an adverse effect on a National Historic Landmark, and when a Programmatic Agreement will be prepared.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Section 106 does not trigger any other environmental compliance requirements.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the Section 106 process for CALFED actions.

- **Formally initiate the Section 106 process as early as possible with the SHPO/THPO**. Doing so provides two principal benefits:

  – The ACHP regulations indicate that avoidance may be the preferred method of addressing potential impacts on historic resources. If historic resources that may be affected are identified early enough in the project design stage, alternative sites or designs that would avoid or at least mitigate these effects may still be available.

  – The lengthy Section 106 process should be one of the first environmental regulatory processes undertaken. By contacting the SHPO early in the process, the project proponent can set a realistic time line for Section 106 compliance.

Enlist the assistance of experts on specific regions and types of properties when developing appropriate mitigation. The historic resources in a particular region may differ considerably from those located in other regions. Obtaining assistance from experts could greatly reduce the amount of time needed to complete consultation with the SHPO.

FARMLAND PROTECTION POLICY ACT

OVERVIEW

The Farmland Protection Policy Act (FPPA) of 1981 and Memoranda on Farmland Preservation, dated August 30, 1976, and August 11, 1980, require federal agencies to include assessments of the potential effects of a proposed project on prime and unique farmland. Under requirements set forth in these policies, federal agencies must determine these effects before they take any action that could result in converting designated prime or unique farmland for nonagricultural purposes. If implementing a project would adversely affect farmland preservation, the agencies must consider alternatives to lessen those effects. Federal agencies also must ensure that their programs, to the extent practicable, are compatible with state, local, and private programs to protect farmland. The Natural Resources Conservation Service (NRCS) is the federal agency responsible for ensuring that these laws and policies are followed.

WHO NEEDS TO COMPLY?

FPPA requirements apply to all CALFED actions that are located on federal land, sponsored by a federal agency, or funded with federal monies, and that involve prime or unique farmland as identified by the NRCS. The FPPA does not cover private construction subject to federal permitting and licensing on nonfederal land or projects proposed on land already in or committed to urban development or water storage.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Compliance with the FPPA is usually incorporated into the NEPA process. See "National Environmental Policy Act" earlier in this chapter for a description of time frames for preparation of environmental reports.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Before taking any action that would result in conversion of designated prime or unique farmland to nonagricultural land, a federal agency must examine the potential impacts of the proposed action. To rate the relative impact of projects on sites subject to the FPPA, federal agencies complete the Farmland Conversion Impact Rating Form (Form AD-1006). Required information includes detailed project information (location, total acres, type of project, etc.) and a numerical evaluation of the project's impact to farmland.

WHAT IS THE FEE?

There is no fee to comply with the FPPA. There is, however, a fee for NEPA compliance. See "National Environmental Policy Act" earlier in this chapter for details.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

The Farmland Conversion Impact Rating Form is based on the Land Evaluation and Site Assessment System (LESA). LESA is a numerical system that measures the quality of farmland. LESA systems have two components. The land evaluation element rates soil quality; the site assessment component measures other factors that affect the farm's viability, such as proximity to water and sewer lines and the size of the parcel. In general, the higher the LESA score, the more appropriate the site is for protection.

Under FPPA, federal agencies that sponsor a project must complete a site assessment. The NRCS is responsible for the land evaluation component. Sites that receive a combined score of less than 160 do not require further evaluation. Alternatives should be proposed for sites with a combined score greater than 160 points. On the basis of this analysis, a federal agency may (but is not required to) deny assistance to private parties and state and local governments that undertake projects that would convert farmlands.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Compliance with the FPPA is usually incorporated into the NEPA process. The FPPA does not trigger any other environmental compliance requirements.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline compliance with the FPPA for CALFED actions.

- **Consult and coordinate efforts with the NRCS early on projects that may affect farmland.** By coordinating early with NRCS, the project proponent will be able to develop alternatives to avoid or minimize effects on farmland. In addition, appropriate mitigation may be incorporated into the project design to further achieve compliance.

- **Use the mitigation strategies described in the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR).** The PEIS/EIR addresses effects on farmland at a programmatic level. Chapters 4 and 7 of the document analyze the impacts of the Preferred Program Alternative and the other alternatives on prime and unique farmland and provide mitigation strategies. The mitigation strategies outlined in Chapter 7 should serve as a foundation for project-specific actions.

COASTAL ZONE MANAGEMENT ACT

OVERVIEW

Congress enacted the Coastal Zone Management Act (CZMA) in 1972 in an attempt to address through legislation the increasing pressures that overdevelopment was having on the nation's coastal resources. Under the CZMA, states are encouraged to voluntarily develop coastal zone management programs (CZMPs) that work to preserve and protect the unique features relevant to each coastal area.

In 1965, the California legislature enacted the McAteer-Petris Act, and in 1976, it enacted the California Coastal Act. These acts created the San Francisco Bay Conservation and Development Commission (BCDC) and California Coastal Commission (CCC), respectively, the two State agencies primarily responsible for putting the State's CZMP to work. In addition, the California Coastal Act created a unique partnership between the CCC and local governments, allowing them to act together to manage the conservation and development of coastal resources through a comprehensive planning and regulatory program.

The CCC has jurisdiction over all of the State's coastal zone, excluding the Suisun Marsh and San Francisco Bay Area, which are governed by the BCDC. Through the CCC, local governments are given the opportunity to prepare local coastal programs (LCPs) and issue coastal permits for their respective areas; LCP oversight is conducted on a regular basis by the CCC.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION. The BCDC was established to accomplish two primary goals: to prevent the unnecessary filling of San Francisco Bay and to increase public access to and along the bay's shoreline. As a result, the BCDC has permit jurisdiction over the following areas:

- the open water, marshes, and mudflats of greater San Francisco Bay, including Suisun, San Pablo, Honker, Richardson, San Rafael, San Leandro, and Grizzly Bays and the Carquinez Strait;
- the first 100 feet inland from the shoreline around San Francisco Bay;
- the portion of Suisun Marsh—including levees, waterways, marshes, and grasslands—below the 10-foot contour line (as measured off a U.S. Geological Survey quadrangle map from mean high water);
- portions of most creeks, rivers, sloughs, and other tributaries that flow into San Francisco Bay; and
- salt ponds, duck hunting preserves, game refuges, and other managed wetlands that have been diked off from San Francisco Bay.

PERMITS ISSUED BY THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION. The BCDC issues two legally different permits based on the project location: San Francisco Bay permits and Suisun Marsh development permits. In addition, each of these permits comes in three different forms with different criteria for project evaluation. The size, location, and impacts of a project determine which type of permit is appropriate for a particular project. The following are the three different types of permits:

- **Administrative permits** are issued for activities that qualify as a minor repair or improvement.

- **Major permits** are issued for work that is more extensive than a minor repair of improvement.

- **Abbreviated regionwide and regionwide permits** cover routine maintenance that qualifies for approval under an existing BCDC regionwide permit.

Figure 8 illustrates the BCDC permit application process.

WHO NEEDS TO COMPLY?

Any person or public agency other than a federal agency that proposes one or more of the following undertakings in or around San Francisco Bay or Suisun Bay must obtain a development permit from the BCDC. (Federally proposed projects are required to provide BCDC with a consistency determination.)

- **Filling.** Placing solid material, building pile-supported or cantilevered structures, disposing of material, or permanently mooring vessels in the bay or in certain tributaries of the bay.

- **Dredging.** Extracting material from the bottom of the bay.

- **Shoreline projects.** Nearly all work, including grading, on the land within 100 feet of the bay's shoreline.

- **Suisun Marsh projects.** Nearly all work, including land divisions, in the portion of the Suisun Marsh below the 10-foot contour level.

- **Other projects.** Any filling, new construction, major remodeling, and substantial change in use in the bay, along the shoreline, in salt ponds, duck hunting preserves or other managed wetlands adjacent in the bay, and many land subdivisions in these areas.

In general, it is likely that a permit will be required if the project is planned along the shoreline of San Francisco Bay in the following Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. In addition, a marsh development permit will be required for all activities in or around Suisun Marsh.

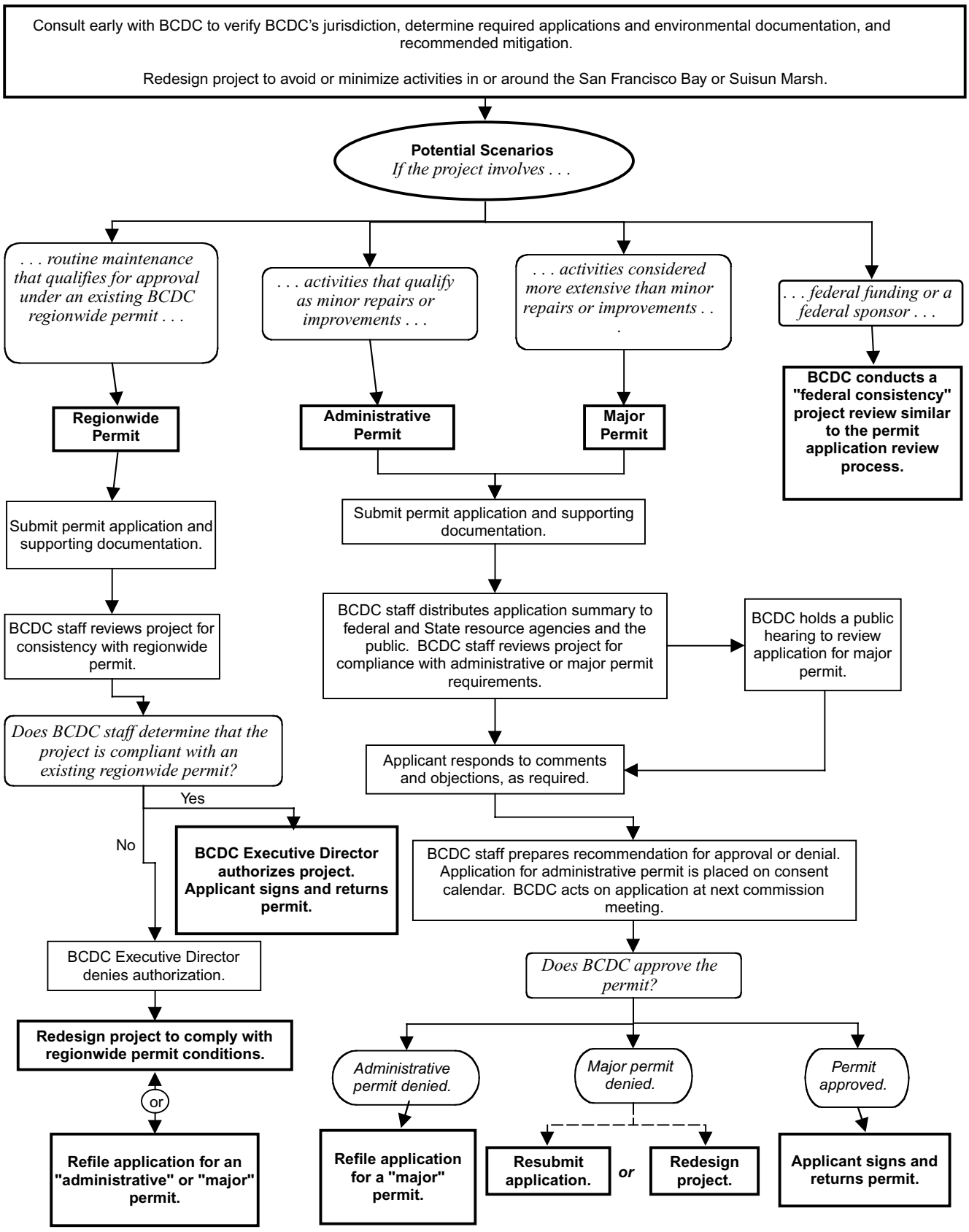


Figure 8
San Francisco Bay Conservation and Development Commission Permit Application Process

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The BCDC has about 120 days to process all applications. Thirty days are allotted after a permit application is received to determine whether the package is complete. Upon receipt of a complete application package, the BCDC has up to 90 days to make a final determination on the project permit. The length of time associated with the process will vary with the complexity of the project (approximately 45–60 days for administrative permits, 45 days for regionwide permits, 90 days for major permits).

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

A BCDC application is considered complete when all the following information has been provided.

	Major Permit	Administrative Permit	Regionwide Permit
Application Form*	One fully completed and signed original and six copies	One fully completed and signed copy	One fully completed and signed copy
Large Scale Project Site Plan	One copy	One copy	One copy
8 ½-Inch by 11-Inch Project Site Plan	Seven copies	One copy	One copy
8 ½-Inch by 11-Inch Vicinity Map	Seven copies	One copy	One copy
Proof of Legal Interest	One copy	One copy	One copy
Local Government Approval	One copy	One copy	None
Environmental Documentation	One copy of environmental determination and environmental impact statement (EIS) or EIS summary	One copy of environmental determination	None
Notice of Pending Application	Posted at project site	Posted at project site	Posted at project site
Certification of Posted Notice	One signed original	One signed original	One signed original
Permit Processing Fee	$250–$10,000	$150–$5,000	$100

* A BCDC application includes applicant information; detailed project description; bay fill information; justification of the proposed fill; detailed shoreline band information; public access information; dredging information; governmental approvals; public notice information (list of owners and residents of all properties located within 100 feet of the project site); environmental impact documentation information; and disclosure of campaign contributions. (A shoreline band is the land area lying between the bay shoreline and a line drawn parallel to and 100 feet from the bay shoreline. The bay shoreline is the mean high water line, or 5 feet above mean sea level in marshlands.)

WHAT IS THE FEE?

Permit processing fees for administrative permits are $150–$5,000; for major permits, $250–$10,000; and for regionwide permits, $100.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

The CZMA allows the BCDC to review federally sponsored or federally funded projects. The BCDC carries out its "federal consistency" responsibilities by reviewing federal projects in much the same way that it reviews permit applications. However, the BCDC cannot require federal agencies to submit permit applications and does not usually impose conditions in its federal consistency decisions. Nevertheless, federal agencies must provide the project details, data, and other material required by the form to assure that the BCDC has the information it needs to evaluate federal projects.

For actions that are located within the BCDC jurisdiction, but for which there is no federal involvement, applicants must obtain a development permit (for actions within the coastal zone) or a marsh development permit (for actions within or along the bay). Applications for development permits and marsh development permits are issued in the same way.

ADMINISTRATIVE PERMITS. These permits are issued for activities that qualify as a minor repair or improvement. After an application package is deemed complete, projects that fall under this permit category are summarized and sent out for review by resources agencies and members of the public who have specifically requested additional information on the project. Provided that no substantive adverse comments are received, the proposed project is placed on a consent calendar with a staff recommendation for approval or disapproval and presented at the next BCDC board meeting. The application will be acted on after that meeting, provided that the BCDC does not decide to consider the project itself.

The primary difference between the administrative permit and the major permit is that the administrative permitting process does not require a formal public hearing.

MAJOR PERMITS. These permits are issued for work that is more extensive than a minor repair or improvement. Upon receipt of a compete application, the proposed project is summarized and sent out for review by the general public and the resource agencies. Approximately 30 days later, the BCDC holds a public hearing on the application, giving the applicant the opportunity to present the proposed project and other concerned parties the chance to present relevant concerns and issues. The BCDC board will then deliberate on the project and consider a staff recommendation. At times the BCDC will vote on the permit application at its next meeting.

ABBREVIATED REGIONWIDE AND REGIONWIDE PERMITS. These permits cover routine maintenance that qualifies for approval under an existing BCDC regionwide permit. Once an application is deemed complete, BCDC staff members have 14 days to determine whether the

work proposed is authorized by an existing regionwide permit. Once this determination is made, the applicant is notified and work can begin if the application is approved.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Compliance with the CZMA does not trigger other regulations; however, the BCDC will not consider an application complete until the applicant has received all discretionary local permits. In addition, projects that require BCDC permits often must receive authorization from the San Francisco Bay Regional Water Quality Control Board and the U.S. Army Corps of Engineers.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline compliance with the CZMA for CALFED actions.

- **Consider federal agency sponsorship of projects within BCDC's jurisdiction,** which may avoid the need to obtain a permit. (Project details, data, and required materials still must be provided to the BCDC.)

- **If a permit is required, submit a draft application.** Draft applications can be submitted for any project and are strongly encouraged by BCDC for large or complex projects. Draft applications allow BCDC staff members to better advise an applicant on the relevant policies and procedures and the type of detailed information that is needed to complete the application. Whether or not they submit a draft application, applicants should consult with BCDC staff members early in a project's planning to determine BCDC's policies relative to the project and receive assistance in completing the permit application.

- **Tier environmental review for project-level actions from the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/ Environmental Impact Report (PEIS/EIR).** The Programmatic Record of Decision for the PEIS/EIR includes a CZMA Programmatic Consistency Determination. This document found that the CALFED Preferred Program Alternative as a whole is consistent with the CZMA. However, project-specific actions may require federal agency involvement if they include proposals to deposit fill in, or to change the use of, water, land, or structures in or around San Francisco or Suisun Bays; these actions will require project-specific compliance with the CZMA. Federal agencies may be required to prepare federal consistency analyses certifying that the proposed project-specific actions are consistent with the BCDC's CZMP. The environmental review for project-level actions that could affect coastal zone resources will be tiered from the PEIS/EIR; this review may be simplified because project descriptions of specific actions would already contain strategies (if necessary) to avoid and mitigate impacts on resources of the coastal zone.

AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978

OVERVIEW

The American Indian Religious Freedom Act of 1978 sets forth a policy to protect and preserve the observance of traditional American Indian religions. The act allows American Indians, Eskimos, Aleuts, and Native Hawaiians access to sites, use and possession of sacred objects, and freedom to worship through ceremonial and traditional rights.

WHO NEEDS TO COMPLY?

The requirements of the American Indian Religious Freedom Act of 1978 apply to all CALFED actions that are located on federal land, sponsored by a federal agency, or funded with federal monies and could involve impacts on the observance of traditional American Indian religions.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Compliance with the American Indian Religious Freedom Act of 1978 is usually incorporated into the NEPA process. See "National Environmental Policy Act" earlier in this chapter for a description of time frames for preparation of environmental reports.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

See "What Does the Application and Evaluation Process Entail?" below.

WHAT IS THE FEE?

There is no fee to comply with the American Indian Religious Freedom Act of 1978. There are, however, costs associated with NEPA compliance. See the "National Environmental Policy Act" earlier in this chapter for details.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

The American Indian Religious Freedom Act of 1978 requires federal agencies to evaluate their policies and procedures to ensure compliance with the policy of the U.S. Department of the Interior to protect and preserve the observance of traditional American Indian religions. The NEPA scoping process is often used to solicit information on the concerns of Native American groups and to comply with the act.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

As mentioned previously, compliance with the American Indian Religious Freedom Act of 1978 is usually incorporated into the NEPA process. The act does not trigger any other environmental compliance requirements.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report did not identify any substantial effects pertaining to the American Indian Religious Freedom Act of 1978 that would result from implementing CALFED's Preferred Program Alternative. Project-specific analysis will be needed to determine potential effects. Using the NEPA scoping process to solicit feedback and creating an outreach program to tribal groups during the early stages of project planning may also help to identify concerns.

INDIAN TRUST ASSETS

OVERVIEW

All federal agencies have a responsibility to protect Indian trust assets. Indian trust assets are legal interests in assets held in trust by the federal government for Indian tribes or individuals. Assets may be owned property, physical assets, intangible property rights, a lease, or the right to use something. Indian trust assets may be located both on and off Indian reservations and typically include lands, minerals, water rights, hunting and fishing rights, natural resources, money, and claims. Indian trust assets do not include properties in which a tribe or individual has no legal interest, such as certain off-reservation sacred lands. Indian trust assets cannot be sold, leased, or alienated or otherwise have their value reduced without approval from the United States through the Bureau of Indian Affairs (BIA).

WHO NEEDS TO COMPLY?

The protection of Indian trust assets applies to all CALFED actions that could involve impacts on Indian trust assets. Although the requirement to protect Indian trust assets does not normally apply to State agencies, the Resources Agency, in signing the Programmatic Record of Decision and certification for the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report, made the commitment that State agencies would address Indian trust assets.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The process of addressing Indian trust asset issues is usually incorporated into the NEPA process. See "National Environmental Policy Act" earlier in this chapter for a description of time frames for preparation of environmental reports.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

See "What Does the Application and Evaluation Process Entail?" below.

WHAT IS THE FEE?

There is no fee for addressing Indian trust asset issues. There are, however, costs associated with NEPA compliance. See "National Environmental Policy Act" earlier in this chapter for details.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

Although Indian trust assets were addressed within CALFED's Final Programmatic Environmental Impact Statement/Environmental Impact Report, impacts to Indian trust assets will need to be addressed in project specific NEPA compliance documents. It is also necessary to consider the impacts to Indian trust assets that could be affected by CALFED-related changes in

operations, or projects that do not trigger NEPA compliance but do require CEQA compliance. The United States has a responsibility to protect trust assets and rights and to take reasonable actions to protect Indian trust assets. Indian trust assets that could be adversely affected should be identified by the federal agency in consultation with the tribe(s). It is important to consider potential effects on Indian trust assets related to hunting, fishing, and water rights, even if the proposed action is not on a reservation.

To identify Indian trust assets, the following entities should be consulted:

- potentially affected Indian tribes or individuals;
- the BIA;
- the Solicitor's Office of the U.S. Department of the Interior; and
- the Federal Agency Native American Affairs Liaisons.

In most cases, the tribal government should be the primary point of contact, but the BIA should always be contacted.

Consultation with affected Indian tribes and individuals is usually documented in the NEPA compliance document along with a statement of potential impacts on Indian trust assets. The Secretary of the Interior, acting through the BIA, must approve any sale, lease, impacts of right-of-way acquisition, or other effects on Indian trust assets. Disagreements concerning impacts on Indian trust assets are resolved using the same channels of appeal open to other groups and individuals who disagree with conclusions that an agency reaches while implementing the NEPA process.

When adverse impacts on an Indian trust asset cannot be avoided, mitigation or compensation measures should be identified in consultation with Indian tribes or individual Indians. Agreements with Indian tribes and individual Indians concerning mitigation or compensation for adverse impacts on Indian trust assets may require BIA or congressional approval.

DOES THE PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

As mentioned earlier, the process of consideration and disclosure of Indian trust asset issues is usually incorporated into the NEPA process; consideration does not trigger any other environmental compliance requirements. However, implementation of mitigation measures may trigger other environmental requirements.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

No substantial effects on Indian trust assets have been associated with the Preferred Program Alternative at the programmatic level. Project-specific analysis will be needed to determine potential effects. Using the NEPA scoping process to solicit information from the tribes and individual Indians regarding Indian trust assets is key to determining the impacts of individual CALFED projects on Indian trust assets.

EXECUTIVE ORDER 12898 (FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY AND LOW-INCOME POPULATIONS)

OVERVIEW

Executive Order 12898 requires federal agencies to identify and address disproportionately high and adverse human health and environmental effects of federal programs, policies, and activities on minority and low-income populations. Two State laws passed in 1999, Senate Bill (SB) 115 and SB 89, expanded the State's environmental justice responsibilities as well.

WHO NEEDS TO COMPLY?

Executive Order 12898 requirements apply to all CALFED actions that are located on federal land, sponsored by a federal agency, or funded with federal monies and may affect minority or low-income populations. In addition, the Programmatic Record of Decision and certification for the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report committed all CALFED agencies (i.e., both State and federal) to ensuring that this policy is carried out across all CALFED program elements.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Compliance with Executive Order 12898 does not create a separate process but rather is usually incorporated into the NEPA process. Please see the NEPA section for a description of time frames for preparation of environmental reports.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Federal agencies are required to evaluate the potentially significant, disproportionately high, and adverse human health and environmental effects of their proposed actions on minority and low-income communities when preparing federal environmental documents. They must provide meaningful opportunities for input into the NEPA process by affected communities.

WHAT IS THE FEE?

There is no fee to comply with Executive Order 12898. There are, however, costs associated with NEPA compliance. See "National Environmental Policy Act" earlier in this chapter for details.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

To demonstrate compliance with Executive Order 12898, the CALFED agencies must show that they have considered and evaluated the environmental effects, including human health, economic, and social effects, on minority and low-income populations. They must design the proposed action to ensure that the action does not result, either directly or indirectly, in

discrimination on the basis of race, color, income, or national origin. The agencies must also provide an opportunity for early public review by those individuals and communities who may be affected, and must include their findings in their environmental document. If a proposed CALFED action will not result in significant adverse impacts on minority and low-income populations, the environmental document must describe how Executive Order 12898 was addressed during the NEPA process.

If a CALFED action does not have federal involvement and, therefore, no NEPA document is being prepared, the CEQA document should discuss whether the action could have disproportionately high health, environmental, social, or economic effects on minority or low-income communities. If the action could have these types of effects, the CEQA lead agency should contact CALFED staff for further guidance.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Compliance with Executive Order 12898 is generally incorporated into the NEPA process. Executive Order 12898 does not trigger any other environmental compliance requirements.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

No substantial adverse effects related to environmental justice have been associated with the Preferred Program Alternative at the programmatic level. Analysis at the project-specific level will be needed to fully determine effects. Where significant and adverse environmental effects on minority and low-income communities are expected, an outreach program to minority and low-income populations can be employed at early stages of project planning. The NEPA scoping process can also be used to solicit information on the concerns of minority and low-income populations. Every effort should be made to ensure consistency with CALFED's Environmental Justice Strategy and initial Annual Plan, included as commitments in CALFED's ROD.

OTHER EXECUTIVE ORDERS ON ENVIRONMENTAL PROTECTION

The following Executive Orders (EOs) are discussed in detail elsewhere in this guide, on the pages noted:

- Executive Order 11988 (Floodplain Management) (page 2-67),
- Executive Order 11990 (Protection of Wetlands) (page 2-69), and
- Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) (page 2-88).

The following is a list of other EOs that address federal facilities and actions with regard to environmental protection. A copy of the full text of all EOs can be found online at http://www.nara.gov/fedreg/eo.html. Listed at the end of this section are websites that are useful for reference on many of the orders listed below. The following list is not authoritative, as new EOs are published weekly and old EOs are amended and withdrawn often. Each federal agency should check the websites of the Council on Environmental Quality's NEPAnet (http://ceq.eh.doe.gov/nepa/nepanet.htm) and the U.S. Environmental Protection Agency (EPA) (http://es.epa.gov/oeca/fedfac/yellowbk/) for current guidance and EOs.

EXECUTIVE ORDER 11514 (PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY) AS AMENDED BY EXECUTIVE ORDER 11991 (RELATING TO PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY)

EO 11514 directs federal agencies to monitor, evaluate, and control their activities to protect and enhance the quality of the environment. Agencies are directed to develop programs and procedures for disseminating timely public information about the programs, and to provide information about existing or potential environmental problems to other federal, state, county, and entities as appropriate.

EXECUTIVE ORDER 11593 (PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT)

EO 11593 requires agencies to nominate qualifying properties for the National Register of Historic Places (NRHP), maintain and restore historic sites, and work with the U.S. Department of the Interior (DOI) in managing historic sites. Before a historic site is altered or destroyed, agencies must receive comments from the Advisory Council on Historic Preservation and provide the Library of Congress with detailed records on the property. The DOI must encourage historic preservation, expedite the placement of federal property on the NRHP, support federal historic preservation, and review surplus federal property transfers.

EXECUTIVE ORDER 12088 (FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS) (SECTIONS 5–8 ONLY)

EO 12088 requires all federal agencies to comply with environmental laws and fully cooperate with EPA, State, interstate, and local agencies to prevent, control, and abate environmental pollution. The EO directs EPA to establish guidelines to assist federal agencies when developing environmental plans. Exemptions to EO 12088 requirements may be granted in the "interest of national security or in the paramount interest of the United States".

EXECUTIVE ORDER 12580 (SUPERFUND IMPLEMENTATION)

EO 12580 delegates the President's authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to the heads of various federal agencies if there is a release on or solely from a vessel or facility under the agency's jurisdiction, control, or custody. The EO delegates most response authority to EPA and the U.S. Coast Guard. However, authority to address releases at federal facilities is generally delegated to the head of the federal agency with jurisdiction over the federal facility. In addition, EO 12580 requires federal agencies to assume certain duties, such as participating on regional response teams. EO 12580 was amended by EO 13016 (see below), which delegated certain CERCLA abatement and settlement authorities to the Secretaries of Commerce, Interior, Agriculture, Defense, and Energy, to be exercised in concurrence with EPA.

EXECUTIVE ORDER 12777 (IMPLEMENTATION OF SECTION 311 OF THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972, AS AMENDED, AND THE OIL POLLUTION ACT)

EO 12777 implements the Oil Pollution Act of 1990 by outlining emergency response procedures for managing spills of oil and hazardous materials into the waters inside U.S. jurisdiction.

EXECUTIVE ORDER 12844 (FEDERAL USE OF ALTERNATIVE-FUEL VEHICLES)

EO 12844 requires federal agencies to adopt aggressive plans to exceed the purchase requirements of alternative-fuel vehicles established by the Energy Policy Act of 1992.

EXECUTIVE ORDER 12856 (FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS)

EO 12856 requires federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act. The intent of EO 12856 is to ensure greater public access to information about hazardous and toxic chemicals in communities. EO 12856 mandates that federal agencies develop pollution prevention plans for reducing or eliminating the use of hazardous and toxic chemicals.

EXECUTIVE ORDER 12902 (ENERGY EFFICIENCY AND WATER CONSERVATION AT FEDERAL FACILITIES)

EO 12902 establishes agency goals and reporting requirements for increasing energy and water use efficiency at federal facilities. All federal facilities (including government-owned/contractor-operated facilities) must adhere to these goals and requirements. Waivers may be obtained from the U.S. Department of Energy (DOE) if EO 12902 requirements are inconsistent with the agency's mission.

EXECUTIVE ORDER 13006 (LOCATING FEDERAL FACILITIES ON HISTORIC PROPERTIES IN OUR NATION'S CENTRAL CITIES)

EO 13006 directs federal agencies to use and maintain historic properties and districts wherever operationally appropriate and economically prudent, especially properties and districts located in central business areas. When implementing policies, the federal government must institute practices and procedures that are sensible, understandable, and compatible with current authority and that impose the least burden on, and provide the maximum benefit to, society. Federal agencies responsible for managing federal facilities or managing historic resources must take steps to reform regulations that impede the government's ability to establish or maintain a presence in historic districts or to acquire historic properties to satisfy federal space needs, unless such regulations are designed to protect human health and safety or the environment.

EXECUTIVE ORDER 13007 (INDIAN SACRED SITES)

EO 13007 directs each executive branch agency with statutory or administrative responsibility for managing federal lands to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites, to the extent practicable and permitted by law, and where doing so would not be clearly inconsistent with essential agency functions. Where appropriate, agencies must maintain the confidentiality of sacred sites. A "sacred site" means any specific, discrete, narrowly delineated location on federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion. (The tribe or appropriate authority of an Indian religion must have informed the agency that such a site exists.)

Where practicable and appropriate, agencies must implement procedures to ensure that reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In implementing EO 13007, agencies must comply with the presidential memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments".

EXECUTIVE ORDER 13016 (AMENDMENT TO EXECUTIVE ORDER 12580)

EO 13016 amends EO 12580 by delegating certain CERCLA abatement and settlement authorities to the Secretaries of Commerce, Interior, Agriculture, Defense, and Energy, to be exercised in concurrence with EPA. Please see EO 12580 (Superfund Implementation) above.

EXECUTIVE ORDER 13045 (PROTECTION OF CHILDREN FROM ENVIRONMENTAL HEALTH RISKS AND SAFETY RISKS)

EO 13045 requires each federal agency to make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children. EO 13045 also requires that each agency's policies, programs, activities, and standards address disproportionate risks to children that result from risks to environmental health and safety.

EXECUTIVE ORDER 13101 (GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION)

EO 13101 has done all of the following:

- elevated implementation of waste prevention and recycling activities to a new, White House–level steering committee;
- discontinued, since the end of 1998, all government purchases of printing and writing paper not containing 30% postconsumer fiber;
- provided new ways for the federal government to build markets for environmentally preferable products and services, which can reduce pollution, save energy and materials, and create jobs;
- increased government purchases of biologically based products to develop markets for these items;
- obliged all federal facilities to comply with recycling and recycled content purchasing requirements under the Federal Facility Compliance Act; and
- required agencies to establish long-term goals both for waste prevention and recycling and for buying recycled and environmentally preferable products.

EXECUTIVE ORDER 13112 (INVASIVE SPECIES)

EO 13112 directs each federal agency whose actions may affect the status of invasive species to:

- identify such actions,
- use relevant programs and authorities to prevent the introduction of invasive species,

- detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner,
- monitor populations, and
- provide for restoration of native species and habitat conditions in ecosystems that have been invaded.

The agencies are also directed to conduct research on invasive species, develop control plans, and promote public education on control of invasive species. The EO states that if a federal agency believes that an action is likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere, it must not authorize, fund, or carry out that action unless it determines, and has made public its determination, that:

- the benefits of such an action clearly outweigh the potential harm caused by invasive species, and
- all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the action.

EXECUTIVE ORDER 13123 (GREENING THE GOVERNMENT THROUGH EFFICIENT ENERGY MANAGEMENT)

EO 13123 directs federal agencies to promote energy efficiency, conserve water, use renewable energy products, and foster markets for emerging technologies. The EO directs the implementation of various measures, such as reducing greenhouse gas emissions attributed to facility energy use, reducing energy consumption per gross square foot of its facilities, and conserving water. Federal facilities will not be exempt from these goals unless they meet new criteria for exemptions, to be issued by DOE.

EXECUTIVE ORDER 13148 (GREENING THE GOVERNMENT THROUGH LEADERSHIP IN ENVIRONMENTAL MANAGEMENT)

EO 13148 directs the head of each federal agency to ensure that the agency takes all necessary actions to integrate environmental accountability into its day-to-day and long-term planning processes, across all missions, activities, and functions. The EO sets forth timelines for developing and implementing systems to support environmental leadership programs, policies, and procedures. This order applies to federal facilities throughout the United States. "Facility" means "any building, installation, structure, land, and other property owned or operated by, or constructed or manufactured and leased to, the federal government, where the federal government…[must comply] with environmental requirements [on] discharge, emission, release, [or] spill of any waste, contaminant, hazardous chemical, or pollutant".

EXECUTIVE ORDER 13149 (GREENING THE GOVERNMENT THROUGH FEDERAL FLEET AND TRANSPORTATION EFFICIENCY)

EO 13149 directs each federal agency operating 20 or more motor vehicles within the United States to reduce its entire vehicle fleet's annual petroleum consumption by at least 20% by the end of fiscal year (FY) 2005, compared with FY 1999 petroleum consumption levels. The EO directs federal agencies to develop a strategy, including most, but not all of the following measures:

- the use of alternative fuels in light, medium, and heavy-duty vehicles;
- the acquisition of vehicles with higher fuel economy, including hybrid vehicles;
- the substitution of cars for light trucks;
- an increase in vehicle load factors;
- a decrease in vehicle miles traveled; and
- a decrease in fleet size.

This order applies to all agencies defined as an executive agency in 5 USC 105.

EXECUTIVE ORDER 13150 (FEDERAL WORKFORCE TRANSPORTATION)

EO 13150 has directed federal agencies to implement a transportation fringe benefit program no later than October 1, 2000. Such a program must offer qualified federal employees the option to exclude from taxable wages and compensation employee commuting costs incurred through the use of mass transportation and vanpools. The EO also directs federal agencies to use any nonmonetary incentive allowable by law to encourage mass transportation and vanpool use.

EXECUTIVE ORDER 13158 (MARINE PROTECTED AREAS)

EO 13158 directs each federal agency whose authorities provide for the establishment or management of marine protected areas (MPAs) to take appropriate actions to enhance or expand protection of existing MPAs and to establish or, as appropriate, recommend new MPAs. Each federal agency must identify any action it conducts, approves, or funds that affects natural or cultural resources protected by an MPA and must avoid causing harm to MPAs. Federal agencies are directed to check the list of MPAs published by the Secretary of Commerce and the Secretary of the Interior that meet the definition of an MPA for the purposes of this EO. For the purposes of this EO, "marine protected area" means any area of the marine environment that has been reserved by federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of its natural and cultural resources.

EXECUTIVE ORDER 13175 (CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS)

EO 13175 directs federal agencies to establish regular and meaningful consultation and collaboration with tribal officials when developing policies that have tribal implications. "Policies that have tribal implications" refers to regulations, legislative comments on proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, or on the relationship between or the distribution of power between the federal government and Indian tribes. Each agency must have an accountable process to ensure meaningful and timely input by tribal officials when regulatory policies are developed and must increase flexibility for tribal waivers. This EO revokes EO 13084 (Consultation and Coordination with Indian Tribal Governments).

EXECUTIVE ORDER 13186 (RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS)

EO 13186 requires that the environmental documentation for any project with federal involvement address the impacts of federal actions on migratory birds. The EO is designed to assist federal agencies in their efforts to comply with the Migratory Bird Treaty Act (MBTA) and requires that agencies work with the U.S. Fish and Wildlife Service to develop a Memorandum of Understanding (MOU) to promote the conservation of migratory bird populations. To the extent practicable, federal agencies must do the following:

- avoid and minimize, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;
- restore and enhance habitat of migratory birds; and
- prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable.

EXECUTIVE ORDER 13211 (ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE)

EO 13211 requires agencies to include in their environmental documentation a discussion of an action's adverse effects on energy supply, distribution, or use, as well as reasonable alternatives to the action and the expected effects of such alternatives. An action qualifies as a "significant energy action" if it supports or leads to a final rule or regulation that is a significant regulatory action under EO 12866 (Regulatory Planning and Review) (or any successor order), and

- is likely to have a significant adverse effect on the supply, distribution, or use of energy; or
- is designated by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, as a significant energy action.

NOTE

The EOs listed above were researched at the following websites. However, all EOs can be found at the Federal Register website.

- Federal Register (http://www.nara.gov/fedreg/eo2001c.html),
- The Yellow Book: Guide to Environmental Enforcement and Compliance at Federal Facilities (http://es.epa.gov/oeca/fedfac/yellowbk/),
- NEPAnet Executive Orders (http://ceq.eh.doe.gov/nepa/regs/ executiveorders.htm), and
- Virtual Facility Regulatory Tour: Executive Orders Affecting Federal Facilities (http://es.epa.gov/oeca/fedfac/cfa/eo.html).

OTHER STATE LAWS AND REGULATIONS

SECTION 401 OF THE CLEAN WATER ACT

OVERVIEW

The federal Clean Water Act (CWA) is the primary federal law that protects the quality of the nation's surface waters, including lakes, rivers, aquifers, and coastal areas. Programs conducted under the CWA are directed at both point-source pollution (wastes discharged from discrete sources such as pipes and outfalls) and nonpoint-source pollution (pollution control that does not come from a defined discrete source, such as a pipe, but which is spatially diffuse--such as urban runoff or agricultural runoff). Under the CWA, the U.S. Environmental Protection Agency sets national standards and effluent limitations. The CWA embodies the concept that all discharges into the nation's waters are unlawful unless specifically authorized by a permit, which is the CWA's principal regulatory tool.

Waters of the United States is a term used to describe areas that fall under federal jurisdiction under the Clean Water Act. Waters of the United States include, but are not limited to:

- navigable waters;
- tributaries of navigable waters;
- waters that are, were, or may be used in interstate or foreign commerce;
- interstate waters;
- intrastate lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds used by interstate travelers for recreation and other purposes, the use, degradation or destruction of which could affect interstate or foreign commerce. This includes waters that:
  - are used by interstate or foreign travelers for recreation
  - are the source of fish or shellfish sold in interstate or foreign commerce, or
  - are used for industrial purposes by industries engaged in interstate commerce.

The Porter-Cologne Water Quality Control Act (Porter-Cologne) is California's primary State law protecting California's waters. Porter-Cologne is codified in Title 23 of the California Water Code. Porter-Cologne gives the State and Regional Boards the authority to regulate discharges of waste, including dredged or fill material, to any waters of the State. While California has traditionally relied upon the Corps' Clean Water Act Section 404 process and California's Section 401 authority to ensure that discharges of dredged and fill materials complied with the State's water quality standards, it has independent authority under the California Water Code. Water Code Section 13260 requires "any person discharging waste, or proposing to discharge waste, within any region that could affect the *waters of the state* to file a report of discharge (an application for waste discharge requirements." (Water Code Section 13260(a)(1). The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code Section 13050(e).)

Section 401 of the CWA requires that federally authorized discharges into waters of the United States not violate state water quality standards. Under Section 401, anyone applying for a

federal license or permit for an activity that may result in any discharge into waters of the United States must request state certification that the proposed activity will not violate state water quality standards. Work on tribal lands that require a Federal license or permit must also obtain water quality criteria from the USEPA. In California, the State Water Resources Control Board (SWRCB), through the regional water quality control boards (RWQCBs), is responsible for issuing water quality certifications.

Figure 9 illustrates the Section 401 certification process.

WHO NEEDS TO COMPLY?

Any one seeking a Federal permit or license for an activity that may result in the discharge of dredge or fill material must obtain certification from the State. CWA Section 401 requirements apply to all CALFED actions with federal approval of a project that may affect state water quality, including those that require federal agency approvals such as issuance of a Section 404 permit. Generally, Section 401 compliance will be required for any CALFED project that will directly affect a waterway and that is carried out or funded by a federal agency or requires authorization from the U.S. Army Corps of Engineers (USACE) (e.g., approval under Section 404 of the CWA or Section 10 of the Rivers and Harbors Act of 1899).

PROJECTS NOT REQUIRING APPLICATION FOR 401 CERTIFICATION

The State Board has issued Section 401 Water Quality Certification for select nationwide permits. The activities and conditions of certification may be found in Appendix D. For these activities, the project proponent does not need to seek individual certification from the State.

Dredge and fill projects that do not require a Federal Clean Water Act Section 404 permit. For example, as the result of a recent U.S. Supreme Court decision, *Solid Waste Association of Northern Cook Counties* v. *United States Corps of Engineers*, some isolated non-navigable waters appear to be outside the purview of Section 404 of the Clean Water Act. If a project is determined to be no longer be subject to Section 404, they would not require Section 401 Certification. However, the project proponent must file a report of waste discharge with the appropriate regional water quality control board (see the next section about waste discharge requirements).

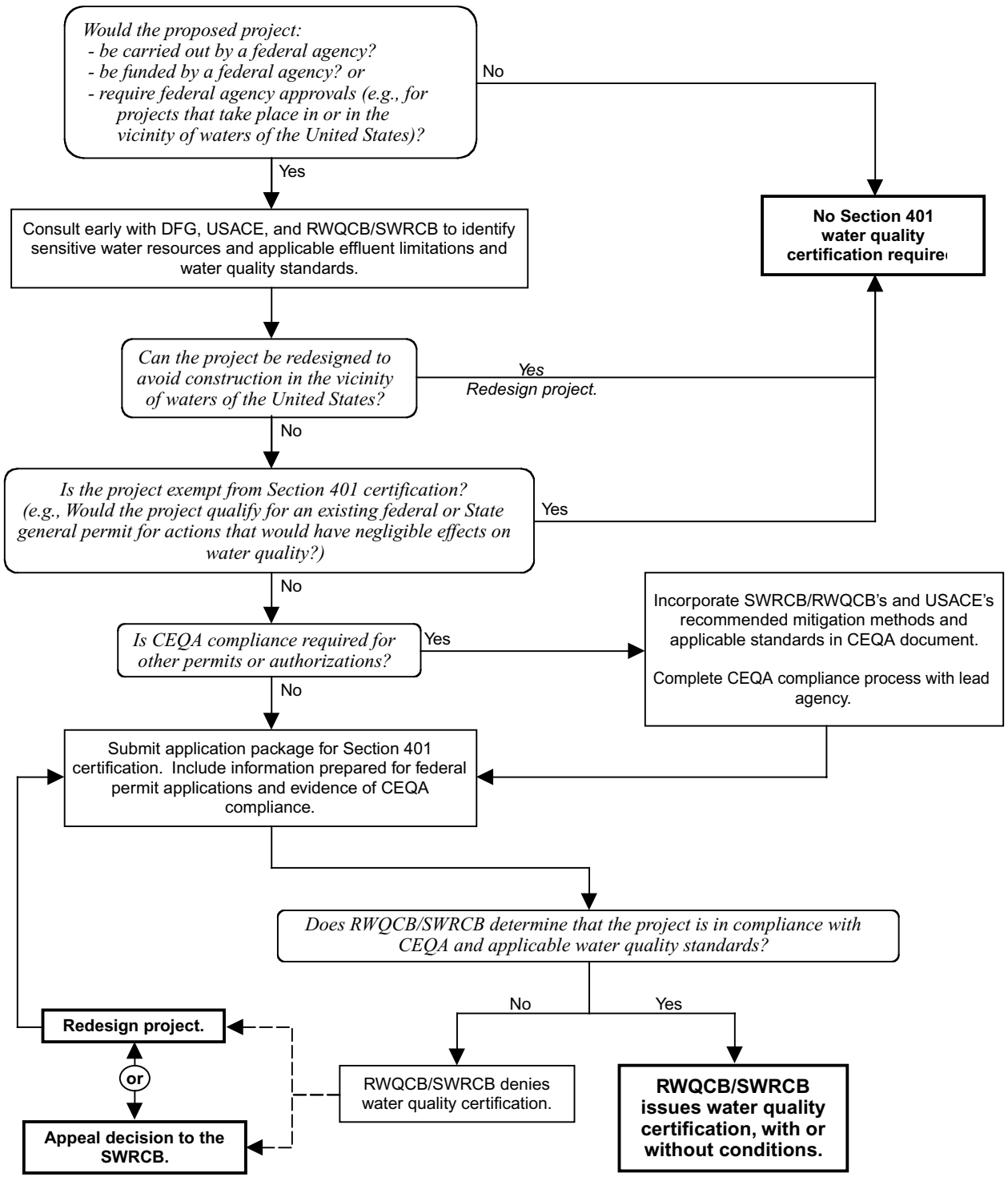


Figure 9
Clean Water Act Section 401 Water Quality Certification Process

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The Corps allows the State a 'reasonable' period of time of 60 days to act on a valid application. The State may request additional time, not to exceed one year.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Section 401 Certification Regulations spell out the required information for a complete application (see Appendix D). Generally, the applicant must provide the following:

- a full, technically accurate description of the entire proposed activity, including:
  - the purpose and final goal,
  - the project location,
  - affected water bodies,
  - the total area of waters of the United States that will be directly affected, and
  - any proposed mitigation of adverse impacts;
- an alternatives analysis;
- copies of any draft or final federal, State, and local licenses, permits, and agreements required for actions associated with the proposed activity (e.g., California Department of Fish and Game [DFG] Lake or Streambed Alteration Agreement);
- a copy of the CEQA document and notice of determination, if applicable; and
- a list of agencies that participated in the CEQA process as lead or responsible agencies.

WHAT IS THE FEE?

The RWQCB requires an initial deposit of $500 for each application. Depending on other factors an additional fee of $500–$9,500 may be imposed. The fee schedule is provided in Appendix D.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

Most CALFED actions will take place in the jurisdiction of either the San Francisco Bay RWQCB (Region 2) or the Central Valley RWQCB (Region 5); Figure 10 shows the region under the jurisdiction of each of the RWQCBs. Applicants should apply for water quality certification with the appropriate RWQCB after they complete the CEQA process, if applicable, and when applying for a federal authorization (e.g., Section 404 or Section 10 authorization) that

See Chapter 3 for addresses and telephone numbers of the regional headquarters.

Figure 10
Regional Water Quality Control Board Jurisdictions

triggers the need for Section 401 compliance. In some circumstances, applicants should apply for water quality certification from the SWRCB and notify the appropriate RWQCB of the application. The SWRCB would issue or deny certification for projects that:

- fall under the jurisdiction of more than one RWQCB;
- are associated with an appropriation of water, subject to Part 2 of Division 2 of the California Water Code;
- involve a hydroelectric facility where the proposed activity requires a Federal Energy Regulatory Commission license or license amendment; or
- require any other diversion of water for beneficial use.

The RWQCB or SWRCB will certify that the discharge complies with State water quality standards or will deny certification. When it issues a certification, the RWQCB or SWRCB must verify that the discharge will comply with applicable effluent limitations and water quality standards. A certification obtained for construction of a facility must also pertain to the facility's operation. The certification may be issued with conditions added to the project to ensure that it complies with the State water quality plan. If the project would have a large or unmitigated impact on water quality, certification may be denied. Processing includes a public notice period of at least 21 days, although this requirement can be modified in emergency cases.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Because the decision regarding Section 401 certification is discretionary, the SWRCB or RWQCB must comply with CEQA. In most cases, another State or local agency is the lead agency for CEQA compliance. In these cases, it is important that the SWRCB or the RWQCB participates in the review of the document to ensure that their requirements, as responsible agencies under CEQA, are adequately met. The SWRCB or the RWQCB will then use the lead agency's CEQA document to meet the CEQA requirements of a responsible agency.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the Section 401 process for CALFED actions.

- **Design the project in such a way that Section 401 certification is not required.** Section 401 review by the RWQCB or SWRCB will not be required for a project designed to avoid impacts on waters of the United States.
- **Provide complete, detailed information, using information previously prepared for a Section 404 application where possible.** As with many other permitting processes, preparing a complete application, including a detailed and relatively final project description and proof of CEQA compliance, can greatly help expedite

processing of a Section 401 permit. When the need for a Section 404 permit triggers the need for a Section 401 permit, the Section 404 permit application package can be used in the Section 401 application as well.

- **Coordinate early with resource agencies.** When the proposed activity requires other licenses, permits, and agreements, early coordination with the appropriate agencies, particularly DFG, is helpful.

- **Determine whether a general permit could apply to this and other CALFED actions.** The Central Valley RWQCB has an existing permit that covers a variety of actions deemed to have a negligible effect on water quality. This is a type of general permit, similar to a nationwide permit issued by USACE under Section 404. CALFED actions probably would not qualify for this permit. However, the Clean Water Act Section 401 Memorandum of Understanding (August 28, 2000) between the U.S. Bureau of Reclamation, the SWRCB, San Francisco Bay and Central Valley RWQCBs, California Department of Water Resources, and DFG specifies that the signatories will consider such a generalized permit certification process for implementing CALFED Stage 1 actions.

OTHER STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY CONTROL BOARD PERMITS AND AUTHORIZATIONS (WASTE DISCHARGE REQUIREMENTS, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS, WATER RECLAMATION PERMITS, AND BASIN PLAN AMENDMENTS)

OVERVIEW OF AUTHORIZATIONS

The primary responsibility for the protection of water quality in California rests with the State Water Resources Control Board (SWRCB) and nine regional water quality control boards (RWQCBs). The SWRCB provides program guidance and oversight, allocates funds, and reviews RWQCB decisions. The RWQCBs have responsibility for individual permitting, inspection, and enforcement actions within each of the nine regions (see Figure 10). The RWQCBs adopt and implement specific water quality control plans (basin plans) that recognize regional differences in natural water quality, actual and potential beneficial uses, and water quality problems associated with human activities.

The SWRCB and RWQCBs regulate discharges of waste that could affect the quality of waters of the State, and discharges of waste into waters of the State through waste discharge requirements (WDRs) authorized under the State's Porter-Cologne Water Quality Control Act, and through National Pollutant Discharge Elimination System (NPDES) permits authorized under the federal Clean Water Act (CWA). The Porter-Cologne Water Quality Control Act defines waters of the State as "any surface water or ground water, including saline waters, within the boundaries of the state".

The RWQCBs issue WDRs to regulate activities of entities subject to the State's jurisdiction that would discharge waste that may affect groundwater quality or that may discharge waste in a diffused manner (e.g., through erosion from soil disturbance). The types of activities that fall under this requirement include dredging or filling operations, experimental or long-term work in sensitive environments, and the disposal of wastes on land. For specific situations, RWQCBs may waive the requirement to obtain a WDR for discharges to land, or they may determine that a general NPDES permit or general WDR may be more effective for a proposed discharge.

Section 402 of the CWA authorizes states to issue NPDES permits for discharges to surface waters both from point sources (discrete conveyances such as pipes or constructed ditches) and from non-point sources (pollution that does not come from a defined discrete source, such as a pipe, but which is spatially diffuse--such as urban runoff or agricultural runoff). The permits specify pollution limits and monitoring and reporting requirements for permitted discharges.

The RWQCBs also regulate water quality related to the use of reclaimed water by issuing permits for water reclamation projects. In addition, they enforce water quality standards

established in basin plans approved by the SWRCB and establish water quality objectives and beneficial uses of major rivers and streams in their jurisdictions.

This section describes requirements for the following authorizations:

- WDRs,
- NPDES permits,
- water reclamation permits, and
- basin plan amendments.

WASTE DISCHARGE REQUIREMENTS

OVERVIEW. The State's nine RWQCBs issue WDRs to regulate activities of entities subject to the State's jurisdiction that would discharge waste that may affect groundwater quality or that may discharge waste in a diffused manner (e.g., through erosion from soil disturbance or waste discharges to land).

Figure 11 illustrates the process for obtaining waste discharge requirements.

WHO NEEDS TO COMPLY? CALFED actions that could require WDRs include those that involve the discharge of waste from construction operations, discharges of pumped groundwater, and dredging and filling operations. CALFED actions that involve dam removal would probably need WDRs.

WHO IS EXEMPT? Activities specifically undertaken by a federal agency do not require WDRs, but a Section 401 certification may be required; any other activities that do not pose a threat or nuisance to water quality may be allowed a waiver of WDR permitting.

HOW LONG DOES THE APPROVAL PROCESS TAKE? RWQCBs usually approve applications for WDRs in about 6 months.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE? Applicants for WDRs must complete a report of waste discharge (ROWD), providing information about the following:

- discharging facilities (e.g., facility owner, facility operator, landowner);
- the type of discharge;
- the locations of discharging facilities and discharge points;
- the status of CEQA compliance and completed or expected CEQA documentation;
- the character of the discharge, including descriptions of the following:
  - design and actual flows,
  - constituents and discharge concentrations of each constituent,

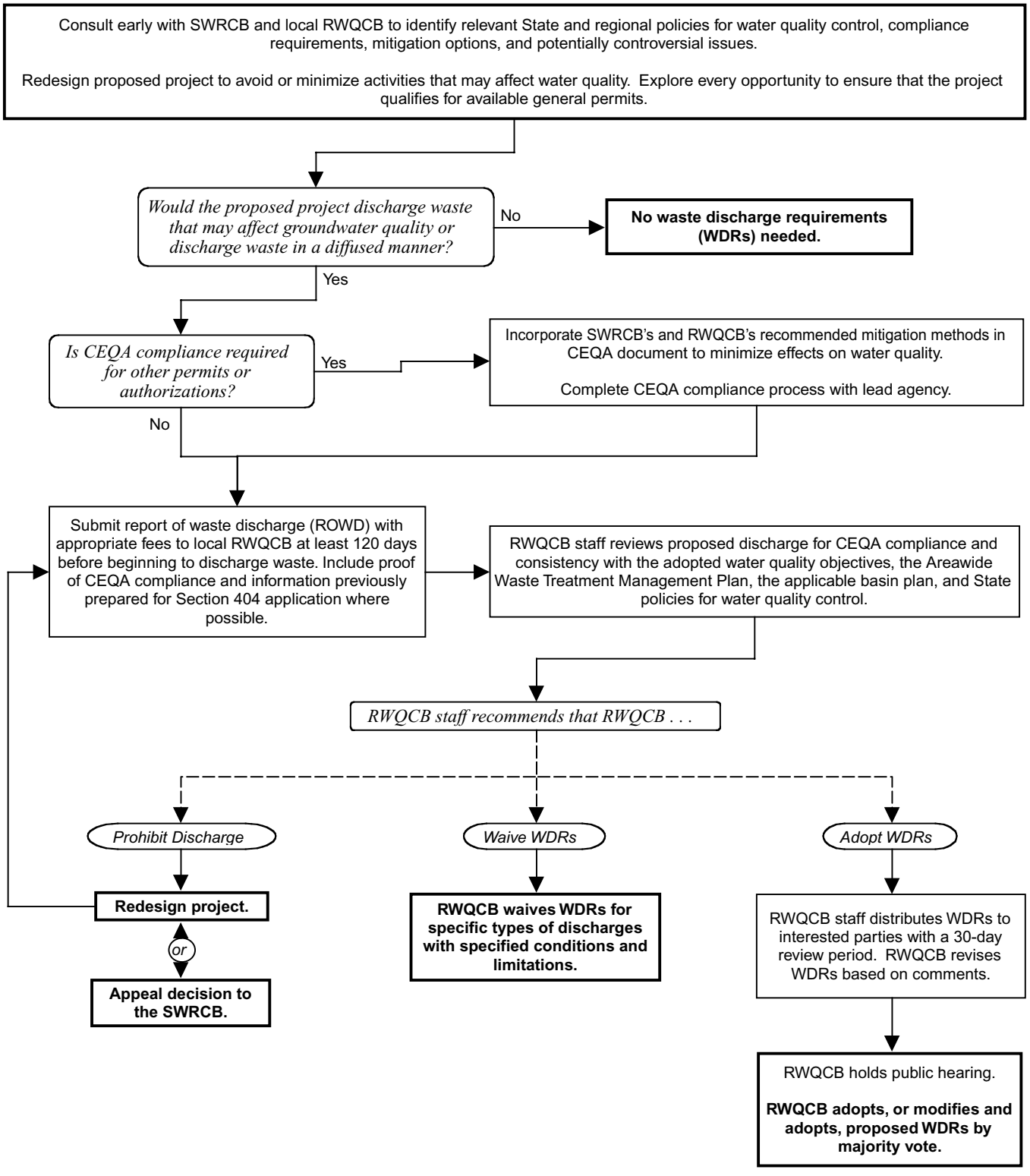


Figure 11
California Waste Discharge Requirements

- treatment processes (including a schematic drawing),
- proposed best management practices (BMPs), and
- disposal methods; and

- the source of water for the project.

WHAT IS THE FEE? Annual fees for WDRs range from $200 to $10,000, depending on the characteristics of the proposed discharge. Dairies are subject to a filing fee only, with no annual fees due. The first annual payment must be submitted with the completed application. Applicants should contact the appropriate RWQCB for the amount of their annual fee.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL? The steps for obtaining WDRs are as follows:

1. The applicant files the ROWD form and any necessary supplemental information with the appropriate RWQCB at least 120 days before beginning to discharge waste.

2. After the RWQCB receives the ROWD and appropriate fee, RWQCB staff members determine whether the application is complete and request additional information, if necessary.

3. Once the application is complete, RWQCB staff members determine whether the proposed discharge is consistent with the SWRCB's and RWQCB's adopted water quality objectives, the Areawide Waste Treatment Management Plan, the basin plan for the region, and State policies for water quality control. They decide whether the RWQCB should adopt WDRs, prohibit the discharge, or waive the requirements.

4. If they determine that the RWQCB should adopt WDRs, RWQCB staff members prepare the proposed WDRs, including proposed effluent limitations, special conditions, and a monitoring program for the discharge. The proposed WDRs are distributed to persons and public agencies with a known interest in the project, and the parties are allowed at least 30 days to comment. The proposed WDRs may be revised based on comments received from the applicant and interested parties.

5. The RWQCB holds a public hearing after a public notification period of at least 30 days. The RWQCB may adopt the proposed WDRs or modify them and adopt them at the public hearing by majority vote. WDRs become effective upon adoption unless the RWQCB specifies a different effective date.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS? Because the issuance of WDRs is discretionary, CEQA compliance is required before an RWQCB issues WDRs. RWQCBs rarely serve as lead agencies for CEQA compliance. In some limited cases, the RWQCB may determine that the proposed discharge is categorically exempt from CEQA. If the action is not exempt, the RWQCB typically serves as a responsible agency. In such a case, it will respond to either the notice of intent to adopt a negative declaration or the notice of preparation of an environmental impact report.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS? The following steps are recommended to simplify and streamline the WDR process for CALFED actions.

- **Design the project in such a way that WDRs are not required.** A project designed to avoid impacts on water quality will not require review by the RWQCB and/or SWRCB.

- **Coordinate early with the RWQCB.** A project applicant should coordinate early with the RWQCB to determine the types of permits necessary for the proposed action. Doing so will enable the applicant to revise the project description to incorporate mitigation, if necessary. It also may reduce the number or complexity of permits that the applicant must obtain from the RWQCB. The applicant should explore every opportunity to ensure that the project qualifies for the general permits available from the RWQCB.

- **Provide complete, detailed information, using information previously prepared for a Section 404 application where possible.** As with many other permitting processes, preparing a complete application, including a detailed and relatively final project description and proof of CEQA compliance, can greatly help expedite processing of an application for WDRs. A Section 404 permit application package can be used in the WDR application as well.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

OVERVIEW. The SWRCB and RWQCBs issue both general and individual NPDES permits. General permits are issued for activities such as construction and industrial operations. Individual NPDES permits are issued for activities not authorized under a general permit.

Many CALFED actions that are subject to NPDES requirements may be permitted under the NPDES Construction Activities Storm Water General Permit. This general permit is for stormwater discharges associated with construction activity, including clearing, grading, excavation, and reconstruction of existing facilities, that could disturb at least 5 acres of land or that is a part of a larger common area of development or sale. Beginning in March 2003, the threshold for compliance with this general permit will change to construction activity that disturbs 1 acre or more of land.

Figure 12 illustrates the NPDES permit process.

WHO NEEDS TO COMPLY? NPDES permitting is required for all CALFED actions considered point-source discharges into waters of the United States, or in which construction would disturb at least 5 acres of soil and water is discharged to surface waters during a dewatering process.

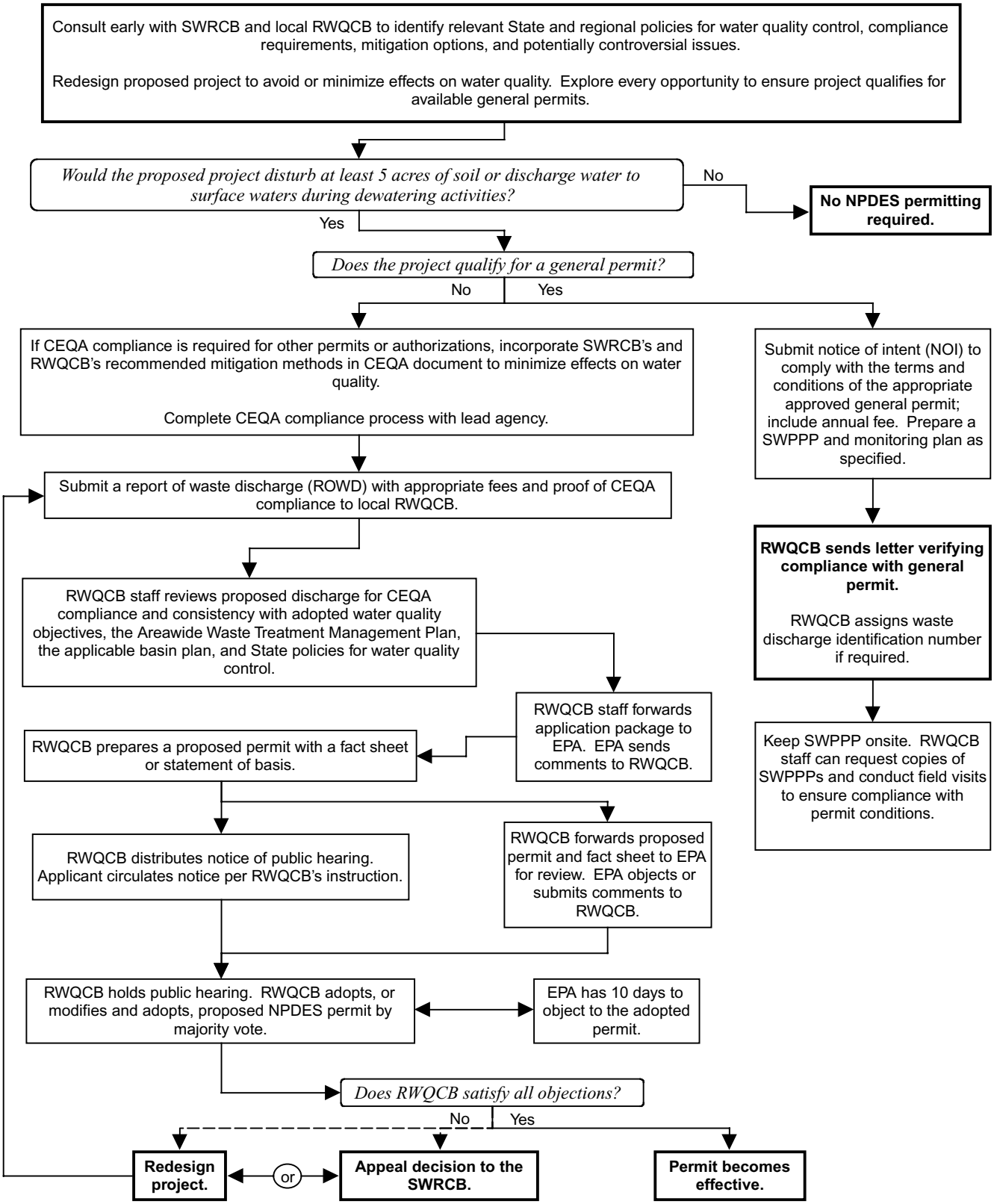


Figure 12
NPDES Permit Process

WHO IS EXEMPT? NPDES permits are not required for activities that would discharge waste into a community sewer system. The U.S. Environmental Protection Agency (EPA) requires treatment of certain hazardous and other wastes before they enter a community sewer system; the project proponent should contact the local sewerage agency to determine whether pretreatment of waste discharges is required for certain waste streams.

Stormwater discharges on Indian tribal lands are regulated by EPA rather than the SWRCB and RWQCBs. Stormwater discharges from construction activity in the Lake Tahoe Hydrologic Unit are regulated under separate permits adopted by the Lahontan RWQCB and are not covered under the SWRCB's stormwater general permit.

HOW LONG DOES THE APPROVAL PROCESS TAKE? The legal maximum time for processing an NPDES permit, from the time of completion of the application is six months, and the RWQCB usually makes a determination about an individual NPDES permit within that time frame. In preparing the permit application form, however, the project proponent needs to be aware that waste characterization, receiving water modeling, etc. can take a significant amount of time before the six-month review period begins. Adverse comments or unforeseen circumstances during the permit process may extend the process beyond six months. There is no specific approval process for, or timing of, approval for general permits, which the State oversees; however, each approved general permit includes terms and conditions that dictate agency notification and documentation requirements.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

GENERAL PERMITS. Project proponents who seek authorization under a general permit must submit a notice of intent to comply with the terms and conditions of the appropriate approved general permit. For example, a proponent seeking authorization under the Construction Activities Storm Water General Permit must submit a notice of intent to comply with the terms of the general permit to discharge stormwater associated with construction activity. This example notice of intent must include the following:

- name and address of the property owner and developer/contractor;
- location and size of the construction site;
- a vicinity map of the construction project location;
- size of the area to be disturbed;
- percentage of the site that is impervious before construction, and percentage that will be impervious after construction;
- dates of construction;
- percentage of the site to be mass graded;

- type of construction;
- payment of the annual fee;
- regulatory status (status of any erosion- or sediment-control plan that a local agency requires, and an explanation of whether the project is subject to CWA Section 404 or 401 conditions);
- information on receiving water; and
- status of the required stormwater pollution prevention plan (SWPPP).

In the case of the Construction Activities Storm Water General Permit, the SWPPP must include information on:

- the project;
- pollutant source and best management practices (BMPs);
- erosion- and sediment-control measures;
- nonstormwater management;
- postconstruction stormwater management;
- maintenance, inspection, and repair of BMPs and other erosion- and sediment-control measures;
- construction crew training; and
- contractors and subcontractors working on the project.

The SWPPP must be completed before construction begins. Some RWQCBs require submittal of the SWPPP; however, upon request, the SWPPP must be made available to an RWQCB or to the public.

INDIVIDUAL PERMITS. Applicants for NPDES individual permits must complete the ROWD form; see "Waste Discharge Requirements" above for a description of information required for the ROWD. The ROWD must be accompanied by a site map. The ROWD is filed with the RWQCB along with the appropriate federal NPDES permit application form, which depends on the type of discharging activity.

WHAT IS THE FEE? A fee of $250–$500 per year is assessed for projects operating under general permits.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

CONSTRUCTION ACTIVITIES STORM WATER GENERAL PERMIT. Before beginning construction, a party that seeks authorization to proceed under the Construction Activities Storm Water General Permit must submit to the SWRCB Storm Water Permit Unit a notice of intent to comply with the terms of the general permit, as described above. There is no application review process. A construction site is considered to be covered under this general permit once a complete and accurate notice of intent has been filed and the appropriate annual fee has been paid. When it has received the notice of intent and fee, the RWQCB sends each discharger a letter that contains the discharger's identification number (waste discharge identification [WDID] number). At their discretion, RWQCB staff members can request copies of the SWPPP and conduct field visits of sites covered under the permit to ensure compliance with permit conditions. The SWPPP must be available onsite for review by visiting RWQCB staff members.

INDUSTRIAL STORM WATER GENERAL PERMIT. This is a general permit for specific industrial activities (e.g., concrete mixing, maintenance yards, sewage treatment plants). This permit is unlikely to apply to many CALFED activities. There is no application or permit review process for this permit. Owners or operators of existing industrial facilities who seek authorization to proceed under the Industrial Storm Water General Permit must submit a notice of intent and "to-scale" site map to the SWRCB. Owners or operators of new industrial facilities that require an NPDES stormwater permit must file a notice of intent at least 30 days before they begin to operate the facility. Proponents who seek authorization to proceed under the Industrial Storm Water General Permit must complete a SWPPP and develop a monitoring plan.

GENERAL ORDER FOR DEWATERING AND OTHER LOW THREAT DISCHARGES TO SURFACE WATERS. This is a general permit authorized by the Central Valley RWQCB for specific discharges of clean or relatively pollutant-free wastewater that pose little or no threat to water quality. The permit covers well development, construction dewatering, pump/well testing, and various other activities that involve low-threat discharges. There is no application or permit review process for this permit. Before beginning construction, an applicant who seeks authorization to proceed under the General Order for Dewatering and Other Low Threat Discharges to Surface Waters must submit to the RWQCB a notice of intent to comply with the terms of the general permit.

As noted earlier, most CALFED actions will take place in the jurisdiction of either the San Francisco Bay RWQCB or the Central Valley RWQCB. The San Francisco Bay RWQCB does not have a general permit for dewatering or other low-threat discharges to surface water. Therefore, the applicant should determine within which RWQCB jurisdiction the proposed activity occurs and consult with the appropriate RWQCB early in the planning process to determine the required permits.

INDIVIDUAL PERMIT. An individual NPDES permit is issued for any regulated discharge of pollutants into surface waters that is not covered by a general permit. The steps for obtaining an individual NPDES permit are as follows:

1. The applicant files the ROWD form and the appropriate federal NPDES application forms with the RWQCB at least 180 days before beginning the discharging activity.

2. After the RWQCB receives the ROWD, application forms, and appropriate fee, RWQCB staff members determine whether the application is complete and request additional information, if necessary.

3. Once the application is complete, RWQCB staff members forward it to EPA within 15 days. EPA has 30 days to request additional information from the applicant, if necessary. After any request for additional information is met, the EPA has an additional 30 days to complete the review and forward comments to the RWQCB.

4. RWQCB staff members evaluate the permit application to determine whether the proposed discharge is consistent with the SWRCB's and RWQCB's adopted water quality objectives, the Areawide Waste Treatment Management Plan, and the basin plan for the area where the project is located. They determine whether an NPDES permit should be issued or the discharge should be prohibited. If a permit is to be issued, RWQCB staff members prepare a proposed permit, which includes:

   - effluent limitations,
   - a program for the discharger to monitor the discharge,
   - reporting requirements, and
   - a fact sheet or statement of basis.

   The fact sheet contains the following information:

   - a description of the facility or activity that is subject to the draft permit;
   - a sketch or detailed description of the location of the discharge;
   - a description of the type and quantity of waste to be discharged;
   - a summary of the basis for the draft permit conditions, such as regulatory provisions;
   - calculations and explanations of the derivation of effluent limitations;
   - descriptions of requested variances with reasons why they do or do not appear justified;
   - an explanation of any permit terms that limit control of toxic pollutants, internal waste streams, or indicator pollutants;

- a description of the compliance history and compliance status of the discharge;
- a description of the procedures for reaching a final decision on the draft permit; and
- the name and telephone number of a staff member who can provide additional information.

The proposed NPDES permit and fact sheet are forwarded to the EPA for review. For minor discharges, an abbreviated statement of basis is prepared instead of a fact sheet.

5. EPA reviews the application and has 30 days to object or submit comments to the RWQCB. EPA may request an additional 60 days to review the proposed NPDES permit.

6. RWQCB staff members prepare a notice of public hearing and mail it to the applicant with instructions for circulation. The applicant must publish the notice for 1 day and submit proof of having complied with the instructions to the RWQCB within 15 days after the posting or publication. RWQCB members also mail the notice and proposed permit to other parties with a known interest in the project. The RWQCB staff may modify the permit before the public hearing based on comments received from the applicant and interested parties.

7. The RWQCB holds a public hearing at least 30 days after a public notification. The RWQCB may adopt the proposed NPDES permit or modify it and adopt it at the public hearing by majority vote. The EPA has 10 days to object to the adopted permit; the NPDES permit does not become effective until the RWQCB satisfies all EPA objections.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS? NPDES permits in themselves rarely trigger the need for a Negative Declaration or EIR under CEQA. In some limited cases, the RWQCB may determine that the proposed discharge is categorically exempt from CEQA. If the action is not exempt, the RWQCB typically serves as a responsible agency and will conduct an evaluation of the water quality impacts of the discharge and call for mitigation as required by CEQA.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS? The following steps are recommended to simplify and streamline the NPDES permitting process for CALFED actions.

- **Design the project in such a way that an NPDES permit may not be required.** A project designed to avoid discharge into waters of the State may not require review by the RWQCB and/or SWRCB. If there is a pollutant discharge to surface water (and this occurs for almost every discharge), a NPDES permit is needed. The RWQCB has no ability to waive issuance of NPDES permits. The Low Threat General NPDES

permit allows quick approval of many of these minor discharges. Both Federal law and the Basin Plan encourage design of projects to eliminate discharges to surface waters, and thus eliminate the need for an NPDES permit. Land discharges may still need a Waste Discharge Requirements (WDR) permit from the RWQCB, however.

- **Coordinate early with the RWQCB.** A project applicant should coordinate early with the RWQCB to determine the types of permits necessary for the proposed action. Doing so will enable the applicant to revise the project description to incorporate mitigation, if necessary. It also may reduce the number or complexity of permits that the applicant must obtain from the RWQCB. Every opportunity should be explored to ensure that the project qualifies for the general permits available from the RWQCB. If a complicated permit review is required, early consultation will help ensure that the RWQCB will have enough staff available for the permit review process.

- **Provide complete, detailed information, using information previously prepared for a Section 404 application where possible.** As with many other permitting processes, preparing a complete application, including a detailed and relatively final project description and proof of CEQA compliance, can greatly help expedite processing of an NPDES permit. A Section 404 permit application package can be used in the NPDES permit application as well.

WATER RECLAMATION PERMITS

An RWQCB may prescribe water reclamation (reuse) requirements where reclaimed water is used or proposed to be used if the RWQCB determines that such requirements are necessary to protect health, safety, or welfare (Water Code Section 13523). RWQCBs with established programs issue water reclamation permits and requirements for individual water reclamation projects, as authorized by the California Water Code, in conformance with California Code of Regulations Title 22 regulations established by the California Department of Health Services (DHS). For uses not addressed by Title 22 criteria, DHS establishes requirements on a case-by-case basis. Water reclamation permits ensure that reclaimed water is of an adequate quality for its intended use.

Water reclamation projects may generate salts that have been removed from the reclaimed water. If this salt is to be disposed of through deep injection into the ground, the project would require an EPA Title 27 permit. If a discharger currently discharges wastewater into a waterway and intends to reuse that water instead, this would require a water right modification (under Water Code Section 1211) from the SWRCB.

No fee is assessed for a water reclamation permit. An application for a water reclamation permit includes CEQA documentation and a letter from DHS indicating that DHS concurs with the issuance of a permit.

Water reclamation permits are adopted by the RWQCB, in the same manner as WDRs.

BASIN PLAN AMENDMENTS

If discharge of waste from a proposed project is projected to exceed existing basin plan standards, the applicant needs to either change the project or request a change to the standards. A basin plan amendment also could be used to strengthen standards for individual pollutants. In the Central Valley there are two basin plans, Sacramento/San Joaquin and Tulare. Some CALFED actions would be implemented within the jurisdiction of the San Francisco Bay RWQCB in areas covered by the San Francisco Bay basin plan.

An application for a basin plan amendment includes documentation equivalent to that required by CEQA. The process of amending a basin plan is high profile and potentially controversial. It can take up to 2 years to process an application for a basin plan amendment; the process includes a 45-day public review period, adoption by the RWQCB and SWRCB, and review by the Office of Administrative Law.

SURFACE WATER RIGHTS

OVERVIEW

A water right is a legally protected right, granted by law, to take possession of water and put it to beneficial use. The two most common types of surface water rights in California are riparian and appropriative. Under the California Water Code, the State Water Resources Control Board (SWRCB) is responsible for allocating surface water rights and permitting the diversion and use of water throughout the State. Through its Division of Water Rights, the SWRCB issues permits to divert water for new appropriations or to change existing water rights. The SWRCB attaches conditions to these permits to ensure that the water user prevents waste, conserves water, does not infringe on the rights of others, and puts the State's water resources to the most beneficial use in the best interest of the public.

Riparian water rights are entitlements to water that are held by owners of lands that border natural flows of water. A landowner has the right to divert a portion of the natural flow for reasonable and beneficial use on his or her land if it is within the same watershed as the natural flow. If natural flows are not sufficient to meet reasonable beneficial requirements of all riparian users on a stream, the users must share the available supply according to each owner's reasonable requirements and uses. Natural flows do not include groundwater that is pumped, is used (e.g., for irrigation), and flows into a watercourse; water seasonally stored and later released; or water diverted from another watershed.

Appropriative rights are entitlements to water obtained through conditional permits or licenses from the SWRCB. These authorizations contain terms and conditions to protect prior (senior) water right holders, public trust resources such as fish and wildlife, and the public interest. The SWRCB authorizes and regulates water diversion and storage in upstream reservoirs and diversion and export from the Delta under appropriative water rights.

An applicant, permittee, or licensee who wishes to change the point of diversion, place of use, or purpose of use from that specified in an existing permit or license must petition the SWRCB to amend a water right. When considering a petition for a water right amendment, the SWRCB considers the same factors as those it considers when a water user applies for a new permit, such as waste prevention, water conservation, infringement on the rights of others, and the best interest of the public.

Figure 13 illustrates the process for obtaining a water right permit.

WHO NEEDS TO COMPLY?

Anyone proposing changes in the point of diversion, place of use, or purpose of use of existing appropriative water rights must petition the SWRCB for an amended water right. A water user seeking to change the quantity of water used under an appropriative water right, or the season when it is used, must apply for a new water right permit. Also, anyone without a current

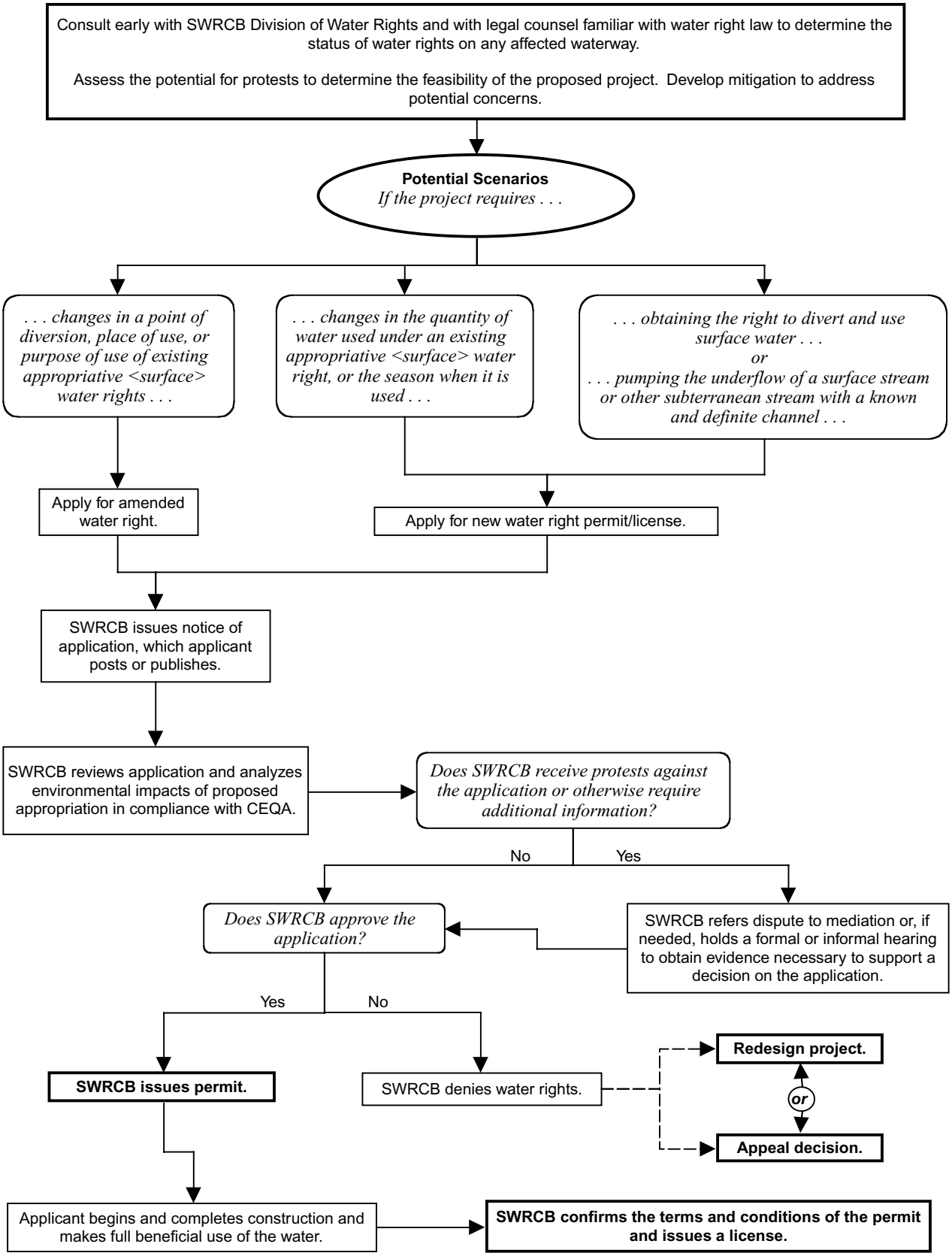


Figure 13
Process for Permit to Appropriate Water

water right who wishes to obtain the right to divert and use water must apply for a new water right.

CALFED actions that would require compliance with SWRCB water right regulations include those involving:

- diversion of water not authorized under an existing water right,
- purchase or transfer of water rights,
- change in use or change in the diversion point of water under an existing water right, and
- appropriation of water for use on nonriparian land.

WHO IS EXEMPT?

Underground water is not subject to the permit procedure unless it is the underflow of a surface stream or otherwise flows in a subterranean stream within a known and definite channel. An entity that proposes to pump groundwater (with the exceptions noted) need not file an application. With certain exceptions, anyone who pumps groundwater in Riverside, San Bernardino, Los Angeles, or Ventura Counties is required to file a notice with the SWRCB because of the low rainfall, high population density, and urbanization of these areas and their dependence on groundwater supplies.

A permit is not required to properly exercise a riparian right. Persons or organizations that divert water under a riparian claim or a claim of appropriative right initiated before December 14, 1914, however, must file a Statement of Water Diversion and Use with the SWRCB.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

Obtaining or amending a water right can be complicated and time consuming; it can take approximately 6 months if there are no protests. Controversial water right applications with unresolved protests require a water right hearing, which may lengthen the approval process.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The applicant must provide details about the following:

- the source of water at the point of diversion, the water body to which it is a tributary, and alternative sources of water available for the proposed project;
- locations of and ownership of land at the point of diversion;
- purposes of use of diverted water;
- amounts, seasons, and places of use of diverted water;

- diversion and storage facilities;
- project schedule; and
- the applicant's existing right to the water under consideration.

Some applications must also be accompanied by a description of environmental considerations, such as other permits and approvals related to the proposed action; environmental and archaeological reports prepared; and vegetation, fish, and wildlife resources that could be affected by the proposed action (including color photographs of vegetation).

WHAT IS THE FEE?

The SWRCB assesses a filing fee of at least $100 and a permit fee of $100 or more. Total fees are based on the amount of water to be diverted and stored. The SWRCB also acts as a collection agent for the Department of Fish and Game's CEQA review fees.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

The steps in the approval process are as follows:

1. The applicant files an application for a new or amended water right with the SWRCB.
2. The SWRCB issues a notice of application, which the applicant posts or publishes.
3. If the SWRCB receives protests, it may refer the dispute to mediation or nonbinding arbitration. If protests cannot otherwise be resolved, the SWRCB holds a formal or informal hearing. The SWRCB has the discretion to hold a hearing on an unprotested application as well. The purpose of a hearing is for the SWRCB to obtain evidence necessary to support a decision on the application. Hearings include:
    - presentation of exhibits by SWRCB or regional water quality control board staff members,
    - presentation of evidence by the applicant and other parties,
    - cross-examination of parties' witnesses by other parties and SWRCB staff, and
    - redirect and cross-examination.
4. The SWRCB reviews the application and analyzes the environmental impacts of the proposed appropriation in compliance with CEQA.
5. If the SWRCB approves the application and the applicant has paid the permitting fees, the SWRCB issues a permit. A reasonable time is allowed for the applicant to

begin construction of the diversion works, complete the construction, and make full beneficial use of the water.

6. When the construction is complete, the terms of the permit are met, and the largest volume of water allowed under the permit is put to beneficial use, the SWRCB confirms the terms and conditions and issues a license to the appropriator. The license is the final confirmation of the water right and remains effective as long as its conditions are fulfilled and beneficial use continues.

To modify an existing appropriative, riparian, or other water right to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water, the water right holder may petition the SWRCB to change the purpose of use to instream flows. The amendment would allow the water right holder to maintain rights to the water even though the right would be dedicated to instream use.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

The Division of Water Rights' approval of an application for a new water right or an amendment to an existing water right or license requires CEQA compliance.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the water right permitting process for CALFED actions.

- **Consult with legal counsel familiar with water right law.** Water right issues in California are complicated and involve intricate legal concerns that considerably exceed common understanding of environmental regulations. These issues are also extremely controversial and can involve many different parties with conflicting interests. It may be appropriate, therefore, to engage legal counsel familiar with water right law to investigate the status of water rights on any affected waterway, including the number, sizes, locations, types of use, and seasons of use of the existing water rights.

- **Assess the potential for protests and attempt to resolve potential conflicts with other water right holders.** Determining whether a water right application is controversial may help indicate the level of analysis and process required by the SWRCB. One way to anticipate potential protests is to investigate whether the stream specified is adjudicated (water diversions are under the control of an appointed water master) or fully appropriated (flows allocated under water rights equal or exceed available flows) and whether any current or historical water right litigation could constrain future permit applicants. Anticipating the controversial issues before applying to the SWRCB may help the project proponent determine the feasibility of the project or the availability of mitigation to address potential concerns; it may also help SWRCB staff prepare for the protests that could arise.

It may be appropriate to enter into early discussions with major downstream water right holders and attempt to negotiate project design and operational features that will accommodate their interests. Anticipating protests and avoiding them through project redesign will help SWRCB staff members prepare an adequate administrative record that supports the decision to approve the water right permit.

GROUNDWATER RIGHTS AND MANAGEMENT

OVERVIEW

Although the State of California administers rights to surface water in the State, it does not have a Statewide program for managing groundwater use. Groundwater rights are not appropriative like surface water rights, and there is no seniority in groundwater use or entitlement, except by virtue of overlying land ownership. Groundwater management in the State is a quickly evolving field, and pending legislation and court rulings will continue to define groundwater rights in the State.

Local management of groundwater and consistency in policymaking are complicated by several factors, including the following:

- In most groundwater basins, more than one agency asserts some authority over groundwater management; the statutory authority may differ among agencies.

- Although many local water agencies are similar, their water management programs may be dissimilar because of differences in their political, institutional, legal, and technical environments.

- The objectives of groundwater basin management vary by jurisdiction and region. They include limiting groundwater overdraft, preventing seawater intrusion, controlling land subsidence, and preventing or controlling transfers and sale of groundwater outside the area that overlies the basin.

Currently, groundwater in California is managed under a variety of authorities. The following six methods of groundwater management have evolved over time. These methods apply to all groundwater except groundwater in subterranean streams that flow through "known and definite" channels (which is governed by the State Water Resources Control Board [SWRCB] under the same laws that govern surface waters):

- **Overlying property rights.** Each owner of land overlying a common groundwater supply has a right to reasonable beneficial use of the water from that supply on or in connection with his or her overlying land. The use of each overlying landowner is correlative (i.e., shared) with the rights of all other owners of land overlying the same groundwater supply and with all holders of riparian rights on any surface stream that is in hydraulic continuity with the groundwater source. This mutual right is the only limit set on groundwater use, if the basin is not adjudicated (see "Adjudication" below).

- **Local agencies.** The California Water Code identifies 23 kinds of districts or local agencies with specific statutory authority to manage surface water, some of which

also have statutory authority to impose some forms of groundwater management. Some of these districts and agencies have exercised this authority; others have not. Various local agencies have implemented conjunctive use programs as a form of groundwater management. This form of management involves operating a groundwater basin in coordination with a surface water storage and conveyance system to maximize water supply reliability.

- **Adjudication.** In some groundwater basins, the groundwater rights of all the owners of land overlying the basin have been determined by the court in response to lawsuits initiated by one or more overlying users. Such determinations are referred to as "adjudication". The court decides who the extractors are and how much groundwater each can extract and appoints a watermaster to ensure that the basin is managed in accordance with the court's decree. The SWRCB also may initiate an adjudication of groundwater rights through the courts to protect water quality. There are 16 adjudicated basins in California (see Figure 14).

- **Groundwater management agencies or districts formed through special legislation.** In some parts of California, special legislation has been enacted to form groundwater management districts or agencies. The legislation allows such districts to enact ordinances to limit or regulate extraction. Nine such agencies existed in California in 1999, and three others have acquired similar authority through amendments to the California Water Code (see Figure 15).

- **City and county ordinances.** Several counties have adopted ordinances to manage groundwater. They include Butte, Glenn, Imperial, Inyo, Kern, Madera, San Diego, San Joaquin, Shasta, Tehama, and Yolo Counties. (Kern County's ordinance applies only to that portion of the county east of the Sierra Nevada.) The nature and extent of the power of local jurisdictions to regulate groundwater are uncertain.

- **Assembly Bill (AB) 3030 management plans.** The Groundwater Management Act, commonly called AB 3030, was passed in 1992 to provide local public agencies with increased management authority over groundwater resources. AB 3030 provides broad general authority for local agencies to adopt groundwater management plans and to impose assessments to cover the cost of implementing the plans. Groundwater management plans have been adopted by 149 agencies in accordance with AB 3030. Other agencies have begun the process. The statute does not require agencies that adopt plans to file copies of those plans with the California Department of Water Resources or the SWRCB.

  Among the agencies that have adopted groundwater management plans are several that have entered into a joint powers authority, joint powers agreement, memorandum of understanding, cooperative agreement, or some less formal agreement to develop a coordinated groundwater management plan.

Adapted from California Department of Water Resources, Groundwater Management in California 1999.

Figure 14
General Location of Adjudicated Groundwater Basins in California

*Through amendments to the California Water Code, these agencies have been given legislative authority similar to that of the groundwater management districts or agencies that allows them to enact ordinances to limit or regulate groundwater extraction.

Adapted from California Department of Water Resources, Groundwater Management in California 1999.

Figure 15
General Location of Groundwater Management Districts or Agencies in California

WHO NEEDS TO COMPLY?

CALFED actions may be subject to a county ordinance, approval by a local agency or district, or the terms of judicial adjudication if they involve:

- the use, replenishment, transfer, or sale of groundwater;
- the use of a groundwater basin for storage; or
- the construction, abandonment, or destruction of a well.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

Local processes and authorities vary widely, and more than one jurisdiction or agency may exercise authority over a groundwater basin. For example, a basin may be the subject of both a groundwater management plan adopted by a water agency and an ordinance adopted by an overlying or adjacent city or county; these may or may not be coordinated. Any applicant proposing a project that involves groundwater rights, groundwater banking, or conjunctive use should consult with an attorney who specializes in water rights and professionals with engineering or hydrogeologic expertise.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance will probably be required for an action that involves groundwater rights, groundwater banking, or conjunctive use. Coordination with one or more local entities may also be necessary to meet local requirements.

SECTION 1600 LAKE OR STREAMBED ALTERATION AGREEMENT

OVERVIEW

The California Department of Fish and Game (DFG) regulates work that will substantially affect resources associated with rivers, streams, and lakes in California, pursuant to Fish and Game Code Sections 1600–1607. Any action that substantially diverts or obstructs the natural flow or changes the bed, channel, or bank of any river, stream, or lake, or uses material from a streambed must be previously authorized by DFG in a Lake or Streambed Alteration Agreement under Section 1601 (public projects) or Section 1603 (projects proposed by nonpublic entities) of the Fish and Game Code. This requirement may in come cases apply to any work undertaken within the 100-year floodplain of a body of water or its tributaries, including intermittent streams and desert washes. As a general rule, however, it applies to any work done within the annual high-water mark of a wash, stream, or lake that contains or once contained fish and wildlife, or that supports or once supported riparian vegetation.

Figure 16 illustrates the process for obtaining a Lake or Streambed Alteration Agreement.

WHO NEEDS TO COMPLY?

CALFED actions that would alter the flow or bed of a water body or occur within its annual high-water mark, as described above, may require a Lake or Streambed Alteration Agreement. Examples of such actions are those that would involve:

- restoring riparian habitat,
- replacing instream gravel,
- setting back levees,
- conducting levee maintenance,
- replacing water control structures, and
- improving through-Delta conveyance.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

DFG issues a Lake or Streambed Alteration Agreement for most projects within 2 months after it receives the required information.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The applicant must complete a Notification of Lake or Streambed Alteration form and a project questionnaire. The forms ask for information about the following:

- the applicant and the applicant's agents;

- the property owner;

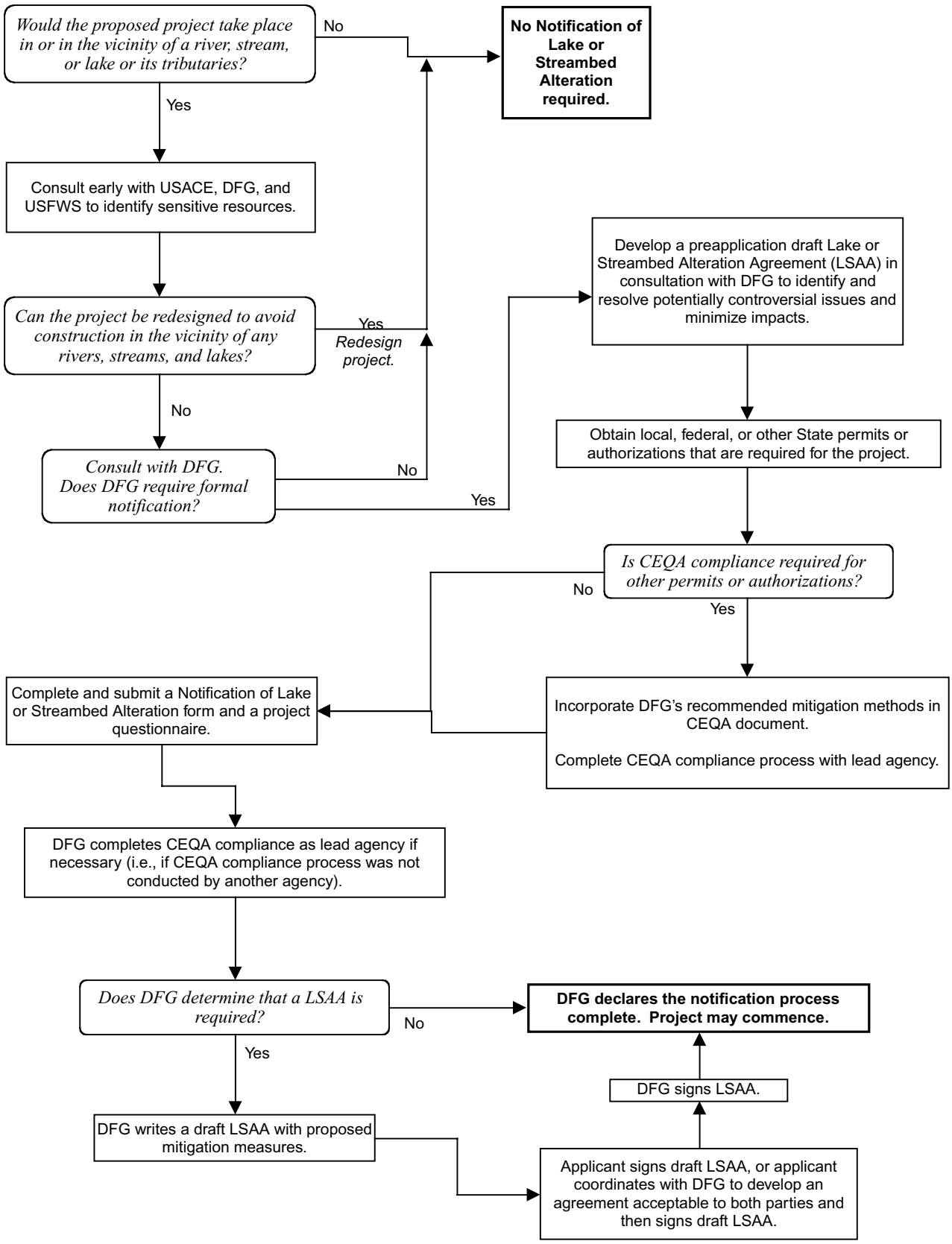


Figure 16
Approval Process for DFG Lake or Streambed Alteration Agreement

- the location of the property where the project would take place, the affected water body, and any water body to which it is a tributary;
- project description, including:
  - estimated dates of project initiation and completion;
  - estimated project cost;
  - number of stream encroachments;
  - methods of construction;
  - types of equipment that will be used;
  - anticipated impacts on wetland and/or riparian vegetation, and on fish and wildlife resources; and
  - pre- and post-project site conditions.

The application package also must include:

- a map that shows the location of the proposed project, with distances from the nearest city or town, known landmarks, access roads, and other information that identifies the location of the project site;
- construction plans for the proposed project;
- any completed CEQA documents;
- copies and descriptions of any local, State, or federal permits, agreements, or other authorizations that apply to the project.

WHAT IS THE FEE?

Generally, DFG charges an application fee of $154 to all applicants except commercial gravel and timber harvest operations. DFG may charge an additional processing fee based on the cost to complete the part of the project or activity for which a Lake or Streambed Alteration Agreement is needed. The additional fee is $618.75 (for a total of $772.75) if the cost is between $25,000 and $500,000, and $1,236.50 (for a total of $1,390.50) if the cost exceeds $500,000; no additional fee is necessary if the cost is less than $25,000. DFG may charge a higher fee for projects that are unusually extensive, protracted, or both.

If a CEQA document has not been completed by another agency and DFG determines that the project is not exempt from CEQA, applicants must submit a deposit of $750, typically at

a later date, to cover DFG's initial CEQA review costs; the applicant will be responsible for paying any additional CEQA-related costs.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

An applicant for a Lake or Streambed Alteration Agreement may consult with the appropriate DFG office before submitting an official notification to determine whether DFG must be formally notified about the proposed project. This prior consultation allows the applicant to learn about and address DFG's concerns about impacts the proposed project may have on fish or wildlife resources; it may also encourage an applicant to modify the project to avoid or lessen these potential impacts. Prior consultation with DFG is not a substitute for notification. The areas encompassed by each DFG region are shown in Figure 17.

The steps in the notification and permitting process are as follows:

1. The applicant submits an application package to DFG. Submission of the application package generally is required if a project will take place in or in the vicinity of a river, stream, or lake or its tributaries. These include rivers or streams that flow periodically or permanently through a bed or channel with banks that support fish or other aquatic life and watercourses with a surface or subsurface flow that support or have supported riparian vegetation.

2. DFG evaluates the applicant's formal notification information to determine whether a Lake or Streambed Alteration Agreement is required for the proposed project. The applicant may not begin the project until after DFG finds that the notification is complete and, if appropriate, issues a Lake or Streambed Alteration Agreement.

3. If DFG determines that the proposed project could result in substantial adverse effects on an existing fish or wildlife resource, it informs the applicant that a Lake or Streambed Alteration Agreement is required. DFG will propose measures necessary to protect the affected fish or wildlife through a draft streambed alteration agreement; the applicant must inform DFG in writing of whether it accepts these proposals.

4. If the applicant does not accept DFG's proposed agreement, the applicant may request a meeting with DFG to develop proposals acceptable to both parties. If DFG and the applicant cannot agree on such proposals, the applicant may request that an arbitration panel be established to resolve any disagreements.

DFG may not sign the agreement until the project as described in the draft agreement is reviewed in accordance with CEQA, unless it is otherwise exempt from CEQA review. CEQA review and the timelines under CEQA begin when DFG receives the signed draft Lake or Streambed Alteration Agreement.

See Chapter 3 for addresses and telephone numbers of the regional headquarters.

Figure 17
California Department of Fish and Game Regions

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

DFG must review all notifications of lake or streambed alteration in accordance with CEQA. If a CEQA document that another agency completed for the project included DFG as a responsible agency during review, DFG typically will use that document to fulfill its obligation under the lake and streambed alteration program. If a CEQA document has not been completed by another agency and DFG determines that the project is not exempt from CEQA, CEQA compliance will need to be completed with DFG as the lead agency.

If Section 404 and Section 401 compliance is necessary, DFG typically will request that it be completed before the project proponent applies for a Lake or Streambed Alteration Agreement. If appropriate mitigation has already been developed through the Section 404, NEPA, and CEQA processes, DFG may not require additional mitigation as part of the Lake or Streambed Alteration Agreement.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the Lake or Streambed Alteration Agreement process for CALFED actions.

- **Avoid and minimize impacts on rivers, streams, or lakes.** To the extent possible, CALFED actions should be designed to avoid activities within the annual high-water mark of a wash or the bed, channel, or bank of any river, stream, or lake. Early consultation between the applicant and the U.S. Army Corps of Engineers (USACE), DFG, and the U.S. Fish and Wildlife Service allows the parties to more easily identify sensitive resources. The applicant may then develop project alternatives that avoid or minimize impacts on these resources.

- **Obtain local, federal, or other State permits or authorizations that are required for the proposed project before contacting DFG.** DFG recommends that project applicants obtain any other required local, State, and federal permits and authorizations before contacting DFG about a Lake or Streambed Alteration Agreement. Applicants should contact city and county planning departments to determine whether any local permits are required for the proposed project; they should also consult with other State agencies and with federal agencies that may have permitting authority over the project to determine whether any other permits or authorizations are required.

- **Plan mitigation requirements through another agency's CEQA document and through Section 404 compliance.** DFG's Lake or Streambed Alteration Agreement process typically begins after other environmental reviews have commenced. These include USACE's environmental review of the proposed project under Section 404 of the Clean Water Act and another State or local agency's review under CEQA (which would include consultation with DFG as a responsible and trustee agency) when the proposed project requires discretionary permits or authorizations from that agency. Effects of the proposed project on rivers, streams, or lakes should be addressed by

mitigation included in these other processes before the project proponent applies for a Lake or Streambed Alteration Agreement from DFG. The DFG permitting process can be expedited if the applicant has prepared an adequate mitigation plan.

- **Consult early and develop a preapplication draft Lake or Streambed Alteration Agreement with DFG.** The applicant may simplify CEQA review and expedite the issuance of a final agreement by developing a draft Lake or Streambed Alteration Agreement in close consultation with DFG before submitting an application package. Controversial issues may be resolved before the permitting process officially begins.

CALIFORNIA WILD AND SCENIC RIVERS ACT

OVERVIEW

The California Wild and Scenic Rivers Act (CWSRA) was passed in 1972 to protect designated rivers that possess extraordinary scenic, recreation, fishery, or wildlife values. Rivers or river segments are classified under the CWSRA as "wild", "scenic", or "recreational". Wild rivers are free of impoundment and generally are inaccessible except by trail, with primitive watersheds or shorelines and unpolluted waters. Scenic rivers are free of impoundments, with shorelines or watersheds that are still largely primitive and shorelines that are largely undeveloped, but accessible by roads in places. Recreational rivers are readily accessible by road or railroad, may have some development along their shorelines, and may have been impounded or diverted in the past. The CWSRA provides for designated rivers to be "preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state".

The CWSRA defines "river" as "the water, bed, and shoreline of rivers, streams, channels, lakes, bays, estuaries, marshes, wetlands and lagoons, up to the first line of permanently established riparian vegetation". It defines "immediate environments" only generally, as the land "immediately adjacent" to designated segments. "Free-flowing" is defined as "existing or flowing without artificial impoundment, diversion, or other modification to the river".

The CWSRA prohibits the construction of any water-impoundment facility on any river included in the system. This prohibition does not apply to certain temporary flood storage facilities on the Eel River or to temporary impoundments for recreational purposes on segments of rivers with a history of these impoundments. (The Secretary for Resources cannot authorize temporary recreation impoundments, however, without first making several findings.) No water diversion facility may be constructed on any river included in the system unless the Secretary for Resources determines that the facility is needed to supply domestic water to local residents and that the facility will not adversely affect the river's free-flowing condition and natural character.

The CWSRA prohibits any State department or agency from assisting or cooperating, "whether by loan, grant, license, or otherwise", in the planning or construction of any dam, reservoir, diversion, or other water-impoundment facility that could adversely affect the free-flowing condition and natural character of the designated river and segments.

According to the CWSRA, the California Resources Agency "is responsible for coordinating the activities of state agencies whose activities affect the rivers in the system with those of other state, local, and federal agencies with jurisdiction over matters which may affect the rivers".

WHO NEEDS TO COMPLY?

CWSRA requirements apply to all CALFED actions that take place on a river segment that the CWSRA designates as wild, scenic, or recreational and that could affect the resources for which the river was designated. Appendix C lists the rivers that have segments that are designated as components of the State Wild and Scenic Rivers System.

WHAT DOES COMPLIANCE ENTAIL?

The CWSRA's jurisdiction is limited to those areas within or immediately adjacent to a designated river. Because any activity that occurs in the river typically will also require a Section 1601 Lake or Streambed Alteration Agreement from the California Department of Fish and Game (DFG), DFG is responsible for evaluating any impacts on the wild and scenic river and including that information in the Section 1601 or 1603 agreement, which DFG then forwards to the Resources Agency.

APPROVAL OF PLANS AND SPECIFICATIONS TO CONSTRUCT OR ENLARGE A DAM OR TO REPAIR OR ALTER A DAM OR RESERVOIR

OVERVIEW

Since August 1929, the State of California has supervised dam construction and modifications, to safeguard life and protect property by preventing dam failure. The California Department of Water Resources (DWR) Division of Safety of Dams (DSOD) is responsible for permitting and approving dams and water storage reservoirs as defined in California Water Code Sections 6002–6004, except those owned by the United States. Any entity that proposes to construct a dam or to enlarge or modify an existing dam or reservoir that would fall under DSOD jurisdiction must obtain written approval of the plans and specifications from DSOD.

Figure 18 illustrates the process for DSOD approvals.

WHO NEEDS TO COMPLY?

DSOD approval may be required for any CALFED actions that involve construction, modification, and removal of dams, levees, artificial ponds, reservoirs, or other structures that are under or would fall under DSOD jurisdiction. DSOD has jurisdiction over any artificial barrier to impound or divert water that:

- is or will reach a height of at least 25 feet above the natural bed of the watercourse at the downstream toe of the barrier to the maximum possible water storage elevation;
- is or will reach a height of at least 25 feet above the lowest outside elevation to the maximum possible water storage elevation, if the barrier is not across a stream channel; or
- has or will have the capacity to impound at least 50 acre-feet (af) of water.

WHO IS EXEMPT?

DWR jurisdiction does not apply to:

- federally constructed projects;
- levees of an island adjacent to tidal waters in the Sacramento–San Joaquin Delta (as defined in Section 12220 of the California Water Code), if the maximum possible water storage elevation of the impounded water does not exceed 4 feet above mean sea level, as established by the U.S. Geological Survey 1929 datum;
- dams or levees with a height of 6 feet or less, regardless of impounding capacity;
- dams or levees of any height if the impounded capacity is 15 af or less;

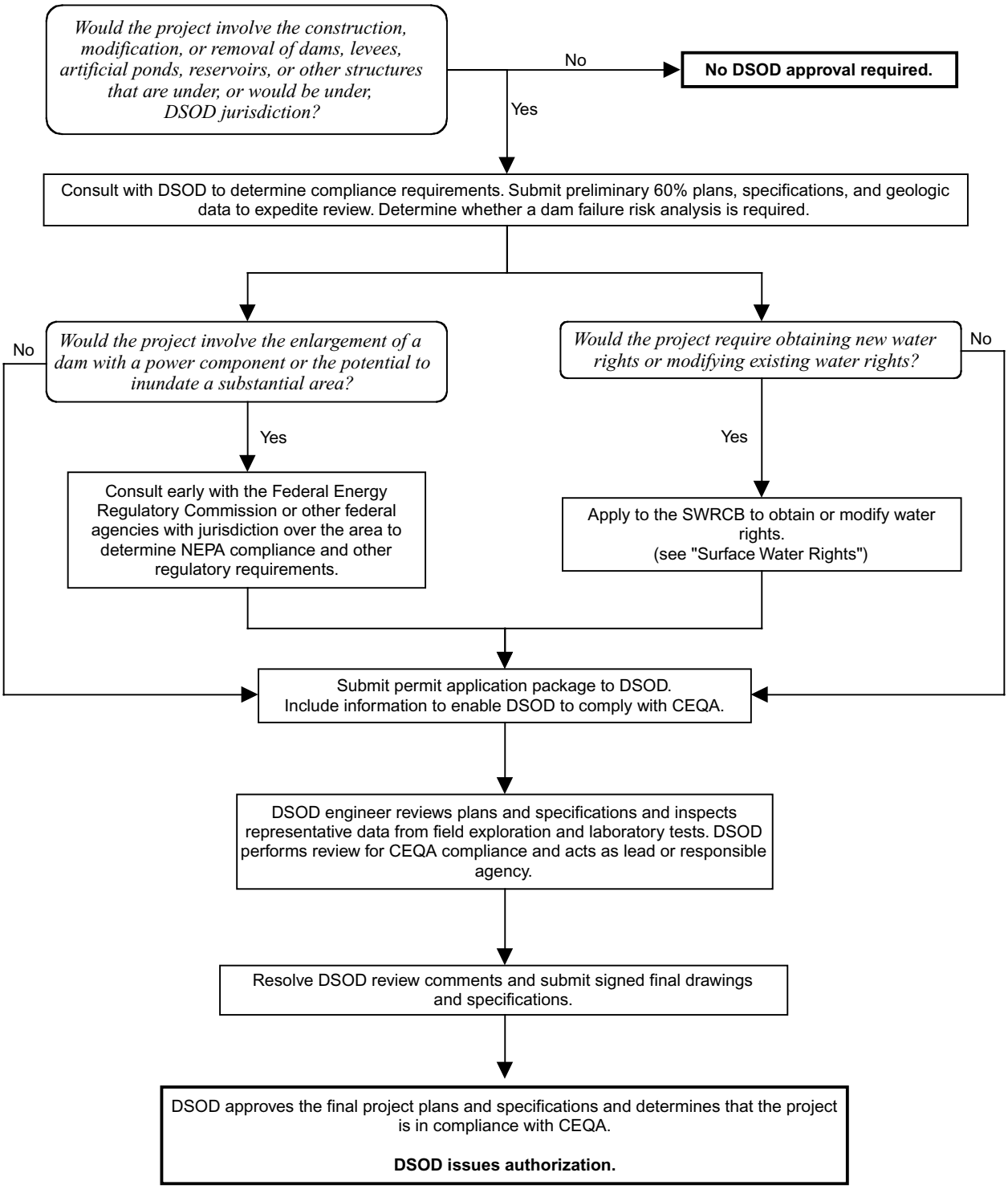


Figure 18
DWR Division of Safety of Dams Certificate of Approval Process

- obstructions in canals used to raise, lower, or divert water;
- levees with the principal purpose of flood control or use for railroad, road, or highway fills or structures;
- steel or concrete circular tanks or tanks elevated above ground;
- barriers that do not cross stream channels, watercourses, or natural drainage areas that are used to impound water for agricultural purposes or for sewage sludge–drying facilities; and
- barriers with a height of 15 feet or less in the channel of a stream or watercourse that are used to spread water upstream for groundwater percolation.

Other specific exemptions, which relate principally to wastewater treatment plants, are included in Sections 6004 and 6025 of the California Water Code.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

DSOD may take 6 months to approve construction, modification, or enlargement of a dam or reservoir.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The applicant proposing construction or enlargement of a dam or reservoir must submit the following:

- two copies of Form DWR-3, "Application for Approval of Plans and Specifications for the Construction or Enlargement of a Dam and Reservoir" (one additional copy is to be sent to the Fish and Game Commission if the dam is in a stream), that describe:
  - the purpose for which the impounded or diverted water is to be used;
  - the location, type, and proportions of the proposed dam and reservoir and appurtenant works;
  - the storage capacity of the reservoir; and
  - the area of the drainage basin, rainfall and streamflow records, and floodflow records and estimates;
- two copies of plans prepared by a registered civil engineer;
- specifications in duplicate;

- evidence of water rights; and

- information to enable DWR to comply with CEQA. This should include, as appropriate, a copy of the final adopted environmental impact report (EIR) or initial study/negative declaration prepared by a lead agency, or data necessary for DWR to act as lead agency to prepare the environmental documentation.

DSOD may require the applicant to submit additional information, such as soils data, logs of borings or other exploratory data, geologic reports, hydrologic data, and structural and hydraulic design notes.

An applicant proposing to repair or alter a dam or reservoir must submit the same information as for construction or enlargement, except that:

- Form DWR-4, "Application for Approval of Plans and Specifications for the Repair of a Dam or Reservoir", is used, specifying the changes proposed;

- plans and specifications may not be required for minor repair work;

- evidence of water rights is not required; and

- repair and maintenance may qualify for an exemption under CEQA.

An applicant proposing to remove a dam and reservoir must submit the same information as for construction or enlargement, except that Form DWR-5 is used and evidence of water rights is not required.

WHAT IS THE FEE?

DSOD charges a filing fee of at least $300 for dam or reservoir construction or enlargement projects; additional application fees vary with the estimated cost of the dam. Applicants should contact DWR to receive updated fee information. There is no filing fee for approval of plans to repair or alter a dam or reservoir or remove a dam and reservoir.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

1. Within 30 days after receipt of an application, DSOD informs the applicant whether the application is complete or other information is needed.

2. A DSOD engineer reviews the plans, specifications, and other information supplied by the applicant and inspects the project site. DSOD also attempts to inspect representative data from field exploration and unique laboratory tests, and other data when reviewing plans for proposed facilities. DSOD then identifies any changes in the plans and specifications and any supplemental data necessary for approval.

3. The applicant submits signed drawings and final specifications when review comments are resolved. Any comments based on preliminary plans and data are not binding on DSOD's later consideration of applications.

4. In DSOD matters relating to CEQA, DWR is either the lead or responsible agency for dams and reservoirs. Usually, DSOD conducts preliminary reviews of dam and reservoir proposals before environmental documentation is prepared. Enlargement of a dam may fall under the jurisdiction of the Federal Energy Regulatory Commission if there is a power component to the enlargement.

5. The right to appropriate water does not come with approval of an application to construct a dam. Applicants must apply to the State Water Resources Control Board to obtain or modify water rights (see "Surface Water Rights").

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance must be completed before DSOD may approve construction, enlargement, or removal of a dam or reservoir. If a proposed dam enlargement would result in the inundation of a substantial area, a federal agency with jurisdiction over the area may require an environmental impact statement (EIS) or a joint EIR/EIS with the CEQA lead agency for the proposed project.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the DSOD process for CALFED actions.

- **Consult with DSOD early in project planning and throughout the application process.** Preapplication meetings with DSOD are not required. Early involvement of DSOD in projects can significantly reduce approval time, however. DSOD recommends the following:

  – CEQA scoping meetings;

  – early site visits;

  – discussions of the preliminary design;

  – reviews of the project schedule; and

  – submittal of preliminary 60% plans, specifications, and geologic data to expedite review leading to final approval.

  If the applicant consults with DSOD in the early stages of project planning, DSOD can identify any special dam design features that may be recommended or required for the proposed dam size and location. With continued coordination throughout the

permit application process, issues can be identified and resolved more easily. There may be opportunities to redesign the project to avoid DSOD jurisdiction.

- **Determine whether a dam failure risk analysis is required.** Applicants should consult with DSOD to determine what type of dam failure risk analysis is required, if any.

STATE LANDS COMMISSION LEASE

OVERVIEW

Upon its admission to the United States in 1850, the State of California acquired sovereign ownership of lands that generally include all ungranted tidelands and submerged lands and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits (sovereign lands). These sovereign lands are held for the benefit of all the people of the State for Statewide public-trust purposes, which include, but are not limited to:

- waterborne commerce,
- navigation,
- fisheries,
- water-related recreation,
- habitat preservation, and
- open space.

The **public trust** is a sovereign public property right held by the State for the benefit of the people. "It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing" free from the obstruction or interference from private parties(1)" In other words, the public trust is an affirmation of the duty of the state to protect the people's common heritage of tide and submerged lands for their common use. Uses of public trust lands are generally limited to those that are water dependent or related, and include commerce, fisheries, navigation, environmental preservation, and recreation.

(1) National Audubon society v Superior court (1983) 33 Cal.3d419, 441.

The landward boundaries of the State's sovereign interests are generally based on the extent and location of these waterways as they last existed naturally, before artificial influences. On tidal waterways (i.e., waterways subject to tidal influences), the State owns fee title to the bed of the river below the ordinary high-water mark as it last existed naturally. In nontidal navigable waterways (i.e., navigable waterways not subject to tidal influences), the State holds a fee ownership in the bed of the waterway between the two ordinary low-water marks as they last existed naturally. However, the entire nontidal navigable waterway between the ordinary high-water marks is subject to the public trust. Very often, the precise location of these boundaries is uncertain. Boundaries may be defined through agreement or court judgment.

The State's sovereign interests are under the jurisdiction of the State Lands Commission (SLC). The SLC's Land Management Division manages the surface uses of State-owned sovereign lands.

During the 1800s, the State sold some of its tidelands (lands that lie between the ordinary high- and low-water marks), particularly those in the Bay Area. In these cases, the State retains a public-trust easement over the sold tidelands.

The State can no longer sell its sovereign lands, but the SLC may lease the sovereign fee lands for various public-trust purposes. A lease is required for any project that involves the construction of improvements to or on the sovereign fee lands, and for some activities that do not include such improvements. The SLC has discretion to issue leases and other agreements designed to encompass activities or projects that will occur over an extended period or geographic scope.

Private owners may use their lands that remain subject to the State's public-trust easement for any purpose not inconsistent with public-trust needs in the area. The SLC may assess public-trust needs when it evaluates projects proposed to be located within the easement area.

Figure 19 illustrates the SLC application and approval process.

WHO NEEDS TO COMPLY?

SLC authorization is required for all CALFED actions that are conducted:

- waterward of the ordinary high-water mark as it last existed naturally, before artificial influences, in waterways that are subject to tidal action; or

- waterward of the ordinary low-water mark before artificial influences, in waterways that are not subject to tidal action.

CALFED actions that may require SLC authorization include, but are not limited to, those that involve:

- restoring aquatic or riparian habitat,
- removing or reconstructing dams,
- placing spawning gravel,
- installing fish screens,
- constructing new diversions or modifying existing diversions, and
- dredging channels.

SLC most often grants authorization in the form of a lease; occasionally, the SLC may enter into another type of agreement that authorizes specific uses. Implementation of specific CALFED actions may be subject to SLC leasing requirements.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The SLC application review process may take as long as 3–4 months for projects that are not complex, or a year or longer for more complex projects.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The applicant must provide the following:

- names, addresses, and telephone numbers of the applicant and the applicant's agent, if applicable;

- a description of the State-owned land on which the project is to be located (with references to a legal description, assessor's parcel number, and deed);

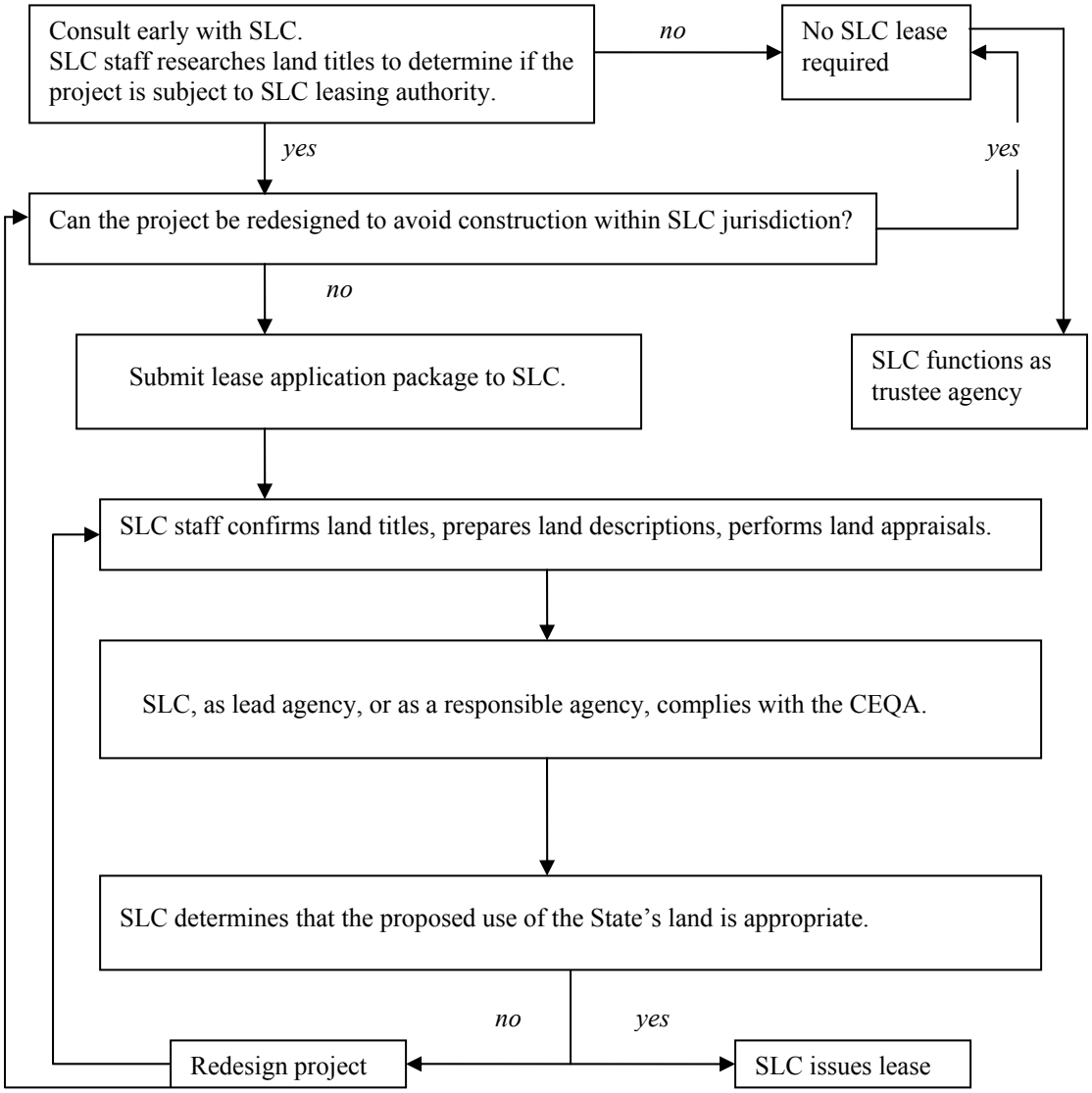


Figure 19

State Lands Commission's Land Lease Application Process

- a site specific USGS topo map at a scale of 1:24,000;
- a project description, including the proposed use, the nature and extent of proposed improvements, construction methods, anticipated project life, and any relevant time constraints;
- evidence of the proponent's entitlement to use adjoining uplands to gain access to the State-owned parcel;
- environmental information that includes a description of the proposed project's environmental setting and potential environmental impacts;
- a scale drawing that shows elevations and the proposed and existing improvements; and
- engineering information, if applicable.

WHAT ARE THE LEASE PROCESSING COSTS?

The SLC charges a nonrefundable $25 filing fee and processing costs to reimburse the SLC staff for the time involved in processing lease applications. Minimum expense deposits for lease processing range from $600 to $15,000. The applicant must pay for additional staff costs if the project involves the preparation of an environmental document or if the project is complex and therefore requires more staff time than is covered by the minimum expense deposit.

WHAT ARE THE ANNUAL RENT RATES?

Rental fees are generally associated with leases. However, a public agency may qualify for a rent-free lease. To qualify, the agency must submit in writing a statement of justification for the rent-free status, which is to be based on a Statewide—as compared to a primarily local—public benefit. Leases for habitat improvement projects, wildlife preservation, and bank protection may qualify for rent-free status.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

1. Project proponents who wish to undertake activities on lands under the SLC's jurisdiction should consult with the SLC early in their planning process to determine whether SLC authorization will be necessary. If it is, the proponents will be provided an application form and guidance on how to complete and submit the form.

2. SLC staff must review all applications to determine whether they are subject to the State Permit Streamlining Act.

3. If the project is a development project as defined in the State Permit Streamlining Act, within 30 calendar days of receiving the application, the staff must notify the

applicant in writing whether the application is complete. Among other things, during the review of the application, the staff determines whether:

- the data submitted are sufficient to allow the staff to locate and describe the nature and extent of State-owned land to be used in the project;

- the project involves State-owned land subject to the SLC's leasing requirements;

- the application has sufficient environmental data for the staff to determine the level and scope of environmental review required under CEQA; and

- the information is sufficient to allow the staff to analyze whether the application is:

  – consistent with the SLC's policies, practices, and procedures;
  – consistent with environmental safeguards and policies of the State; and
  – otherwise in the best interests of the State.

If the application is determined to be incomplete, the staff will specify what additional information is required. Upon receipt of any additional material, the staff will inform the applicant within 30 days whether the application is complete.

4. Once the application is accepted as complete, the SLC staff processes the application. Steps in application processing include researching land titles, preparing land descriptions, and performing land appraisals.

5. If the SLC is the CEQA lead agency, the staff prepares the required CEQA documents. The staff submits completed CEQA documentation and application materials to the SLC.

6. All applications must be considered by the SLC for approval or denial. The SLC establishes terms and conditions for each lease, which are subject to negotiation on a case-by-case basis. The SLC considers numerous factors when it determines whether a proposed use of the State's land is appropriate, such as:

   - consistency with the public trust,
   - protection of natural resources and other environmental values, and
   - preservation or enhancement of the public's access to State lands.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance is required before the SLC can issue a lease.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the SLC authorization process for CALFED actions.

- **Consult early with SLC staff members to determine whether a SLC lease is required.** By consulting early with SLC staff members, the project proponent can find out whether the project is subject to the SLC's leasing requirements. If the SLC staff were to determine that the project does not involve sovereign fee lands, or if the project could be redesigned to avoid the SLC's jurisdiction, the proponent would not have to obtain a lease from the SLC.

- **Develop a memorandum of agreement (MOA) with the SLC in place of a lease.** Applicants should explore the possibility of entering into an MOA with the SLC.

- **Develop master leases with the SLC to cover multiple CALFED actions.** Applicant should explore the possibility of entering into a master lease with the SLC.

RECLAMATION BOARD ENCROACHMENT PERMIT

OVERVIEW

The California State Reclamation Board (Reclamation Board) is required to enforce appropriate standards for construction, maintenance, and protection of flood-control facilities. The Reclamation Board has jurisdiction over designated floodways, "project" levees and the area between levees, and the stream reaches listed in the California Code of Regulations under "Title 23. Waters. Division 1. Reclamation Board". The board generally has jurisdiction over streams within the Central Valley and Lake County, including all tributaries and distributaries of the Sacramento and San Joaquin Rivers and Tulare and Buena Vista Basins. The board may also assert jurisdiction over other streams where there are flood-control projects.

The Reclamation Board may issue permits for proposed activities (encroachments) that may affect "project works" as long as the applicant ensures that the activity maintains the integrity and safety of flood-control project levees and floodways and is consistent with the flood-control plans adopted by the Reclamation Board or the California legislature. "Project works" are all or any component of a flood-control project within the Reclamation Board's jurisdiction that the Reclamation Board or the legislature has approved or adopted. Project works include levees, bank protection projects, weirs, pumping plants, floodways, and any other related flood-control works or rights-of-way (ROWs) that have been constructed using State or federal funds; project works also include flood-control plans. Flood-control plans include project flood channels without levees and project channels with levees, any flowage areas that are part of the flood-control project, areas where there are flowage easements, and designated floodways.

The Reclamation Board recognizes the increasing desire to restore lands that are under its jurisdiction, particularly through CALFED actions. The board has developed a draft resolution (No. 99-9) to address this issue. The draft resolution states that:

- The Reclamation Board supports habitat restoration efforts and recognizes that restoration projects may provide flood-control benefits.
- The board will require hydraulic modeling and other engineering studies of proposed projects when needed and will require hydraulic impacts to be mitigated to a less-than-significant level.
- As soon as the hydraulic model being developed by the U.S. Army Corps of Engineers (USACE) for the Sacramento and San Joaquin River Basins Comprehensive Study is functional, the Reclamation Board will make it available to all permit applicants.

In summary, the board will be proactive in addressing proposals for restoration projects, but it evaluates restoration work as it does any other encroachment. Also, the board requires a Safe Harbor Agreement under the Endangered Species Act for restoration projects in case vegetation management (e.g., trimming or removal of elderberry bushes) will be required to maintain the design carrying capacity of channels where habitat has been restored.

Figure 20 illustrates the Reclamation Board encroachment permit process.

Safe Harbor Agreements are voluntary agreements between USFWS or NMFS and cooperating nonfederal landowners to benefit endangered and threatened species while giving the landowners assurances from additional restrictions. Any nonfederal landowner can request the development of a Safe Harbor Agreement. These agreements are between the landowner and USFWS or NMFS or between USFWS or NMFS and other stakeholders (such as State natural resource agencies, tribal governments, local governments, conservation organizations, or businesses). USFWS or NMFS will provide assurances (by issuing an "enhancement of survival" permit) that, when the term of the agreement ends, the participating landowner may use the property in any otherwise legal manner that does not move it below baseline conditions. In return for the participant's efforts, USFWS or NMFS will authorize incidental take through the Section 10(a)(1)(A) process of ESA.

WHO NEEDS TO COMPLY?

CALFED actions that may be within the jurisdiction of the Reclamation Board include:

- the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, or encroachment within an area under the jurisdiction of the Reclamation Board; or

- work of any kind within an area for which there is an adopted flood-control plan. This work may include the planting, excavation, or removal of vegetation and the repair or maintenance of flood-control facilities that involves cutting into the levee (wholly or in part).

CALFED actions may require Reclamation Board permits if they involve relocations of diversion facilities, revegetation in areas near flood-control facilities or within designated floodways, improvement or realignment of levees, and dredging to improve conveyance capacity.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The Reclamation Board may take 30 days–9 months to issue a permit, depending on the complexity of the proposed project and the level of controversy associated with it.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The applicant must provide the following:

- a description of the proposed work, including a statement of the dates the planned construction will begin and end, and four copies of exhibits and drawings that depict the project or use;

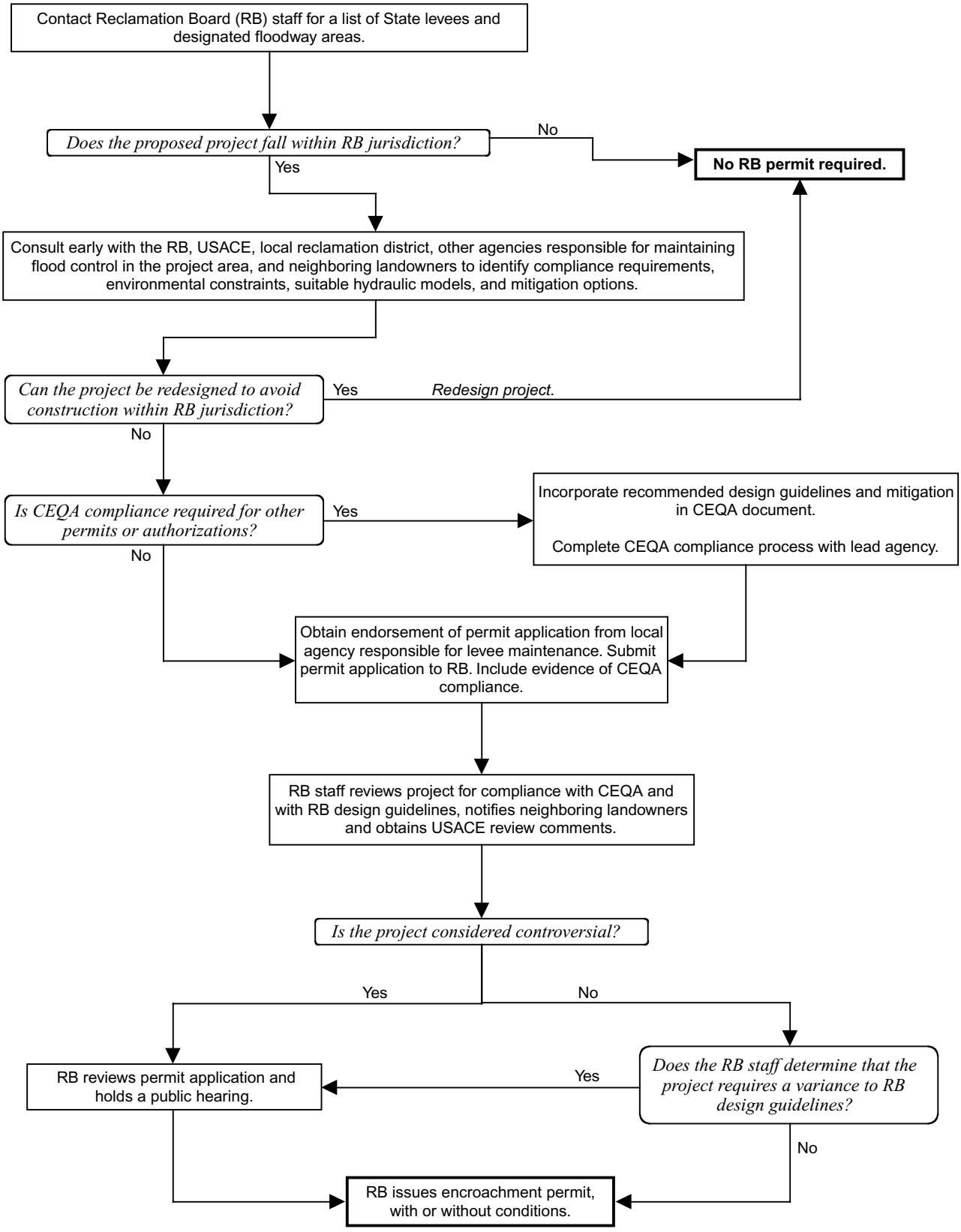


Figure 20
State Reclamation Board Encroachment Permit Process

- the location of the project site and color photographs that show two views of the site;

- a completed copy of the Reclamation Board's environmental questionnaire and a copy of any draft and final environmental review documents prepared for the project;

- complete plans and specifications that show the proposed work, a location map that shows the site of the work with relation to topographic features, a plan view of the area, and an adequate cross section through the area of the proposed work; and

- the names and addresses of all owners of land adjacent to the property where the project is located.

Additional information, such as geotechnical exploration reports, soil testing results, hydraulic or sediment transport studies, biological surveys, environmental surveys, and other analyses, may be required at any time before the Reclamation Board acts on the application.

WHAT IS THE FEE?

There is no fee to receive a Reclamation Board encroachment permit.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

1. The applicant should contact the Reclamation Board for a list of project levees and designated floodway areas to determine whether the proposed project falls within the Reclamation Board's jurisdiction.

2. The applicant submits the permit application to the local agency responsible for maintaining the levees within the area of the proposed work (such as a reclamation district, drainage district, flood-control district, levee district, city, or county). This agency must endorse the application.

3. After receiving the local maintaining agency's endorsement, the applicant submits the application, including CEQA documentation (if available), to the Reclamation Board. If the maintaining agency delays or declines to endorse the application, the applicant may submit it to the Reclamation Board with a written explanation of why it was not endorsed by the maintaining agency.

4. The Reclamation Board staff sends a notice of the pending application to the owners of adjacent property, notifies the applicant if additional studies are required, sends a copy of the application to the USACE for review and comment, and reviews the potential environmental effects of the proposed project.

5. If the project is not considered controversial (i.e., no serious protests are filed with the Reclamation Board) and it meets Reclamation Board design guidelines, the board's staff can issue a permit. If the project is considered controversial or requires a

variance to Reclamation Board guidelines, the board itself reviews the permit application. This review includes a public hearing; the Reclamation Board will file a notice with interested parties and those that may be affected by the project. An application for a project that does not require variances may be sent to the board for a hearing and decision if a potentially affected party protests the application. The board meets the third Friday of every month.

The Reclamation Board has some discretion regarding whether to require a permit for a project, based on whether the project could alter patterns or timing of flooding or floodflows downstream or upstream of the project. For example, a permit may not be required for a project that involves a change in crops in a river bypass system to benefit waterfowl, even though it would take place within a designated floodway. However, the project proponent should coordinate with the Reclamation Board to determine whether a permit is required.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance is required before the Reclamation Board issues a permit.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the Reclamation Board permitting process for CALFED actions.

- **Coordinate early with the local reclamation district, other local entities, and affected landowners.** Reclamation Board staff members rely heavily on input from local reclamation districts and others responsible for maintaining flood integrity in the project area. During the planning and design phase of the particular action, the project proponent should coordinate with the local reclamation district and other entities to identify compliance needs, commitments, and mitigation options and to resolve issues before a permit is processed. In addition, neighboring landowners may have an interest in the project and the way in which it affects the flood integrity of surrounding lands. Discussions with interested parties may be appropriate to resolve any controversy about these potential effects. Early consultations may make it easier to develop the project description and construction plans and specifications so that flood-control facilities and effects on other properties are avoided.

- **Ensure that the application package is complete and that review of environmental issues is adequate.** Project applicants should ensure that the application package is complete and includes a detailed project description. Many delays in processing permit requests have involved projects where CEQA review was insufficient or analysis of hydraulic impacts was incomplete. Changes in flood patterns for neighboring properties, property rights issues, and detrimental changes in levee integrity can also create controversy and delays.

- **If hydraulic modeling is required, determine whether there are existing hydraulic models that cover the project area.** If the Reclamation Board requires

modeling of the potential hydraulic effects of a proposed project, using an existing model can save considerable time and expense. The project applicant should coordinate with the Reclamation Board, USACE, and local reclamation districts to determine whether hydraulic models that cover the area of interest have been created, and, if so, whether an existing model is suitable for the required analysis and could be modified to evaluate the proposed project for a reasonable cost.

- **Group projects that have similar effects or that are located in the same geographic area.** Reclamation Board permits may be issued for certain grouped actions that have similar effects or are located in a similar geographic area. It may be appropriate to group, or "bundle", CALFED actions by functionality (e.g., fish screens for small diversions), geographic location, or both, to minimize the number of applications to be prepared.

- **Coordinate with the Reclamation Board to develop master permits.** The Reclamation Board can issue a master permit for certain programs under a particular agency. A Reclamation Board permit would still be required for subsequent individual projects, but as long as master permit conditions were met, the approval authority may be delegated to the general manager of the Reclamation Board. A public review period would not be required for approval of actions that fall under the scope of the master permit. It may be appropriate for a particular agency that proposes several similar types of actions under CALFED to coordinate with the Reclamation Board to develop a master permit.

CALIFORNIA DEPARTMENT OF TRANSPORTATION ENCROACHMENT PERMIT

OVERVIEW

The California Department of Transportation (Caltrans) is responsible for planning, designing, constructing, operating, and maintaining State-owned roadways. Caltrans issues encroachment permits for projects that affect areas within the rights-of-way (ROWs) of State-owned roadways. The permits are issued to ensure that proposed encroachments are compatible with the primary uses of the State highway system, ensure the safety of both the permittee and the highway user, and protect the State's investment in the highway facility.

Figures 21a and 21b illustrate the Caltrans encroachment permit process.

WHO NEEDS TO COMPLY?

An encroachment permit is required for any project that would include an area within, under, or over a State highway ROW. Examples of actions that may require a permit are opening or excavating a State roadway for any purpose; placing, changing, or renewing an encroachment; planting or tampering with vegetation growing along any State roadway; constructing and maintaining road approaches or connections to the ROW on any State roadway; and conducting any activity that affects the use of the roadway.

CALFED actions that could result in the need for a Caltrans encroachment permit include those that involve:

- constructing a water conveyance structure within a State roadway ROW,
- completing projects under bridges operated by the State that require storage of construction equipment within a State roadway ROW,
- surveying within a State roadway ROW, and
- constructing a recreational trail that crosses a State roadway ROW.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

If the proposed encroachment is minor and will have no significant effect on the environment or is exempt from the requirements of CEQA, a Caltrans permit engineer reviews the application and has 60 days after receiving a complete application to issue or deny the permit. The time needed to complete the permitting process for a major encroachment varies with the complexity of the project; the process can take as long as 4 months.

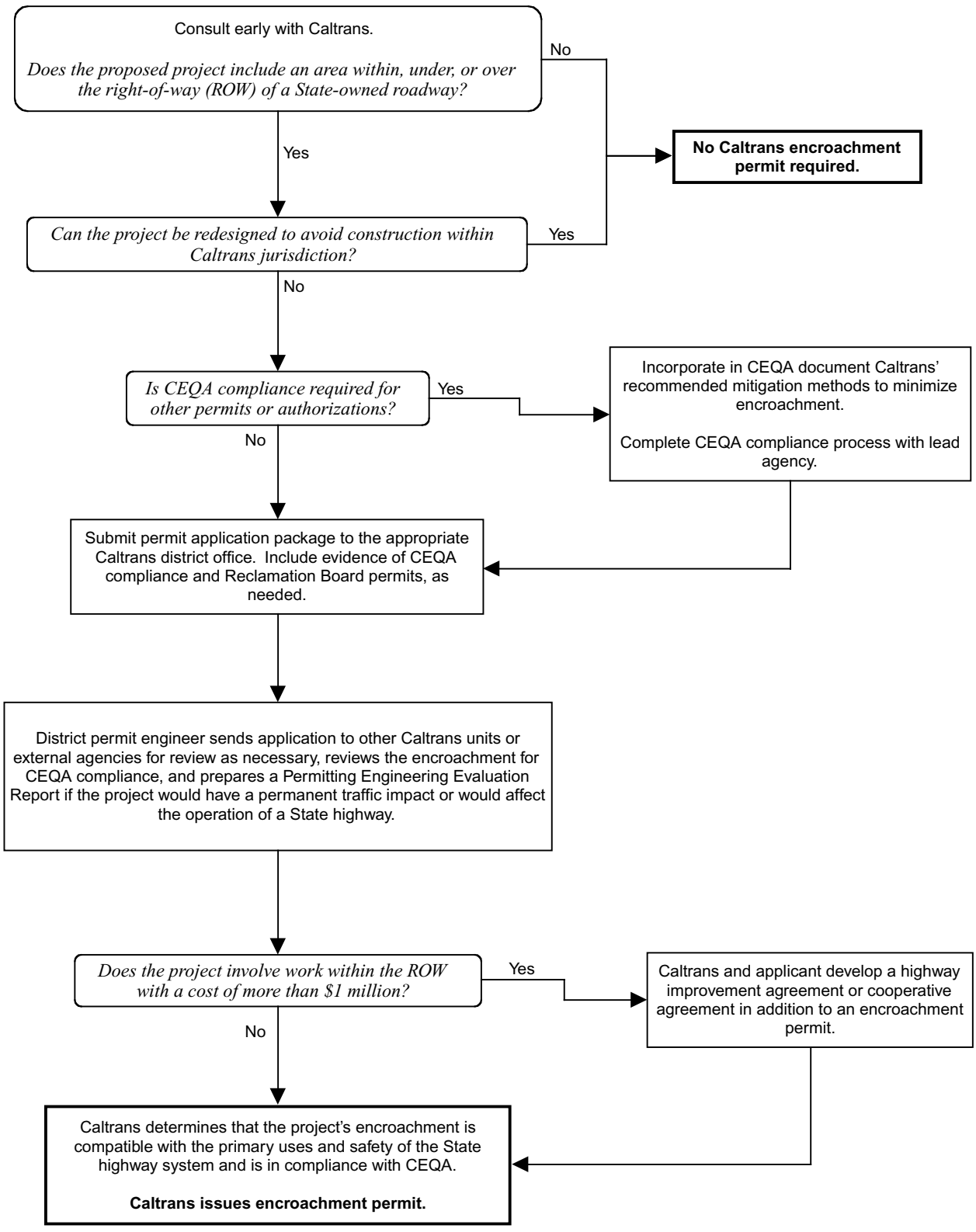


Figure 21a
California Department of Transportation Encroachment Permit Process

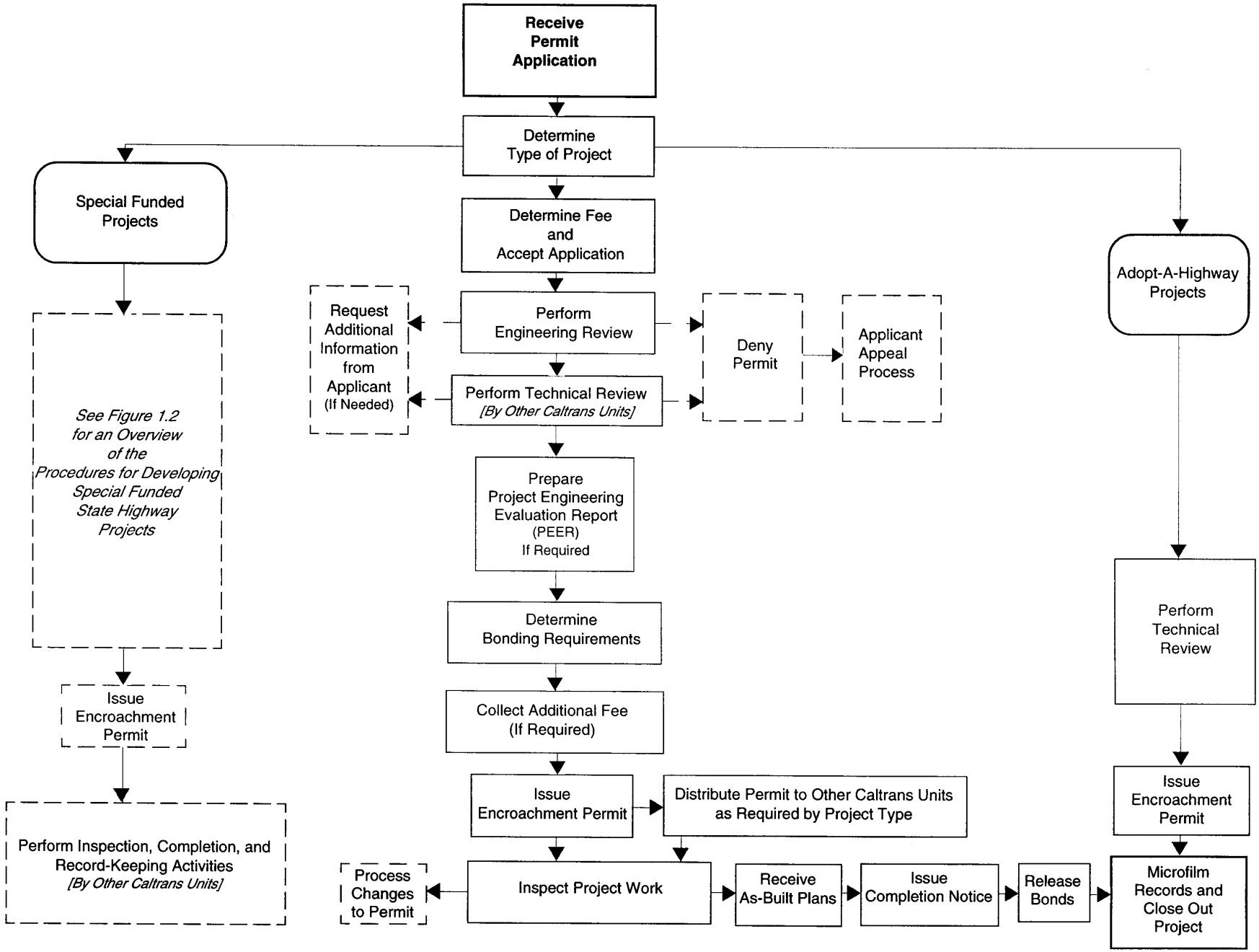


Figure 21b
Overview of Encroachment Permit Process

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Applicants must complete Caltrans' standard encroachment permit application form (TR-0100 in Appendix D), which requests information including:

- the location of proposed work or encroachment by county, the State highway route and postmile, and the distance to the nearest major road intersection;
- a complete description and detailed plans of the proposed work and existing facilities within the State highway ROW, including an estimate of the cost of work within the ROW;
- the estimated dates of the beginning and end of the proposed work;
- the width, depth, length, and type of surface to be cut for excavation, if applicable; and
- the type and diameter of pipes to be laid within a State highway ROW, if applicable, and the pressure and product in the pipes.

All measurements must be provided in metric units (dual units, English and metric, are acceptable).

If the project is subject to CEQA review by another agency, a copy of the approved CEQA documentation must be attached. If the project is not subject to another agency's CEQA review, the applicant must complete the environmental significance checklist portion of the permit application form.

Caltrans may require additional information, such as:

- a hazardous waste investigation and assessment or clearance;
- traffic data (existing and projected);
- development hydrology maps and calculations (existing and postdevelopment);
- hydraulic calculations;
- development and highway grading plans;
- development and highway drainage plans; and
- plans, profiles, cross sections, and contour-grading plans of the proposed work in the State highway ROW prepared in conformance with Caltrans standards.

If the encroachment would involve work within the ROW with a cost of more than $1 million, or if the encroachment would require permanent access or maintenance in freeway or expressway ROWs, additional detailed information, cooperative agreements, and plans are required.

WHAT IS THE FEE?

Caltrans' fee varies according to the amount of effort required to review and inspect the proposed encroachment permit work. The fee is estimated at the time the application is submitted, and a deposit is required of all applicants except public agencies and utilities before the application is processed. Public agencies are exempt from fees, and public utilities are billed for fees at a later date.

Caltrans also may require the applicant to submit a Caltrans Encroachment Permit Performance Bond. If a bond is required, Caltrans will determine the amount. Caltrans normally does not require a bond from public agencies or public utilities.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

The steps for obtaining a Caltrans Encroachment Permit are as follows:

1. The applicant submits a completed application to the appropriate Caltrans district office (see Figure 22). An application is not considered complete until the applicant has complied with all other statutory requirements, including those of CEQA.

   If the project involves the installation of underground facilities where a State highway is on, or crosses, a levee under the jurisdiction of the California State Reclamation Board (Reclamation Board), the applicant must furnish proof of a Reclamation Board permit (see "Reclamation Board Encroachment Permit" above).

2. The district permit engineer, or an assigned representative, determines that the application is complete.

3. The staff of the permits office sends the application to other Caltrans units (e.g., Traffic, Design, and Environmental) or external agencies such as the Federal Highway Administration for review, if necessary. Other Caltrans units may have to review applications to ensure coordination with subsequent maintenance operations and planned future development by Caltrans or others. The reviews are to be completed within 10 working days after the day of distribution. If the reviews are not completed within 10 working days, the permits office staff must contact the reviewing unit to determine when the reviews will be completed. If the reviews are likely to exceed a period of 60 days, the permit engineer must obtain the concurrence of the applicant to extend the review time.

   A project report or Permit Engineering Evaluation Report (PEER), which documents an engineering analysis of proposed work, is required for every action that has a

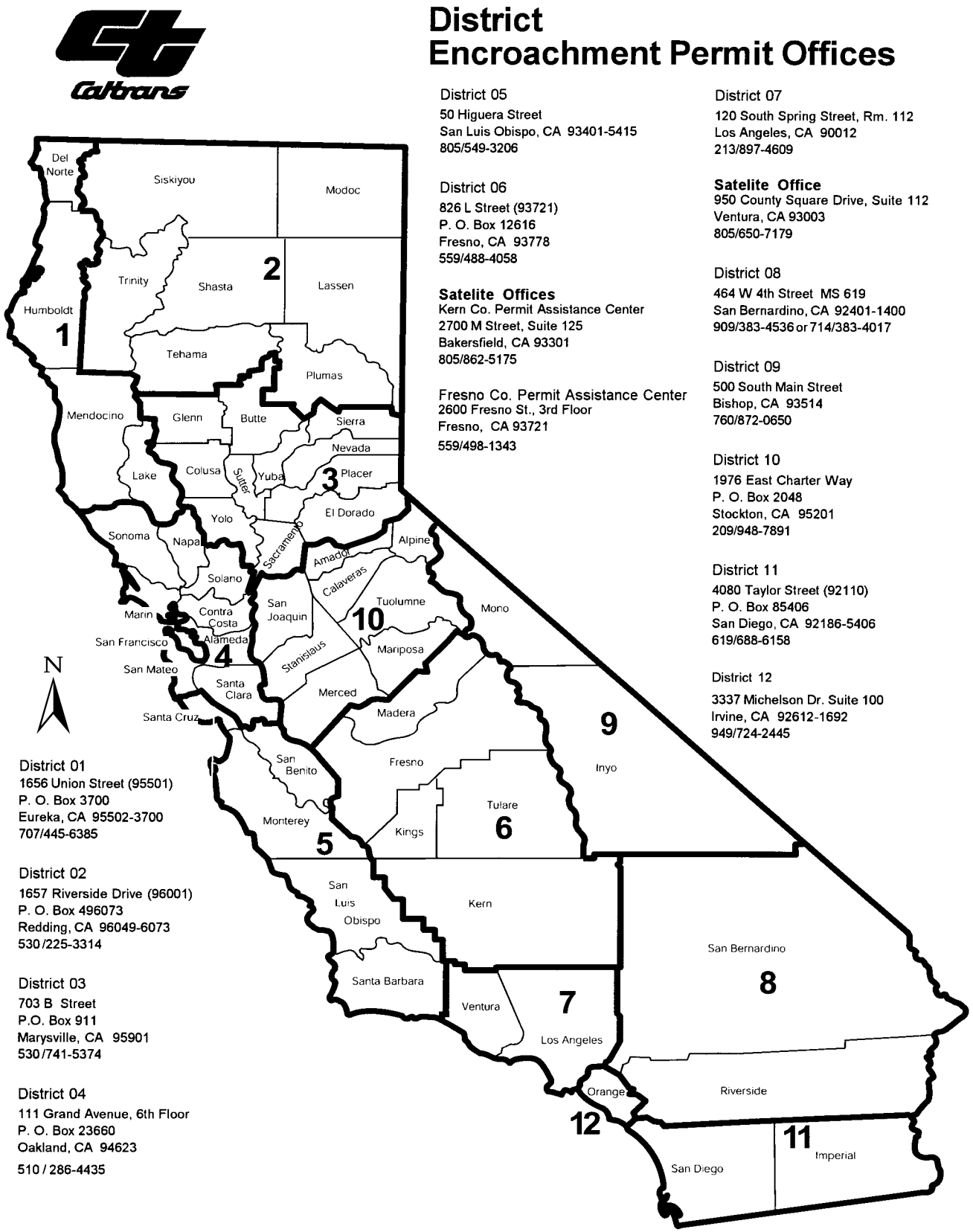


Figure 22
California Department of Transportation Districts

permanent traffic impact and for work that affects the operation of a State highway. This requirement is unlikely to apply to CALFED projects; however, the permit office must verify that the responsible reviewing units have considered the need for an appropriate report.

4. The permits office has established a 45-day working period for application review to ensure that the 60-day statutory limitation is met. Therefore, after an application is accepted as complete, a decision should be made by the 45th day to issue or deny the application. If the review and approval of other Caltrans units are required and the project is complex, more than 60 days may be needed to complete this process.

   Caltrans evaluates the permit application to determine how the encroachment may affect:

   - the safety of motorists, pedestrians, and workers;
   - the design, construction, operation, maintenance, or integrity of the highway system;
   - future and ongoing highway construction, repair, and maintenance contracts;
   - the aesthetics of the highway corridor;
   - the environment; and
   - existing drainage.

PERMIT DENIAL. If a completed permit application is denied, the district sends the applicant a letter detailing the reasons for denial and the applicant's right to appeal to the district director. The letter must be sent before the 60th day following the submittal of the application.

Denial by a permit engineer in the district may be appealed to the district director. If the district director denies issuance of a permit, the applicant may appeal to the director of transportation for a final decision.

ISSUANCE OF A PERMIT. Permits are issued after all reviews are returned, all conditions imposed by the lead and responsible agencies have been met, and any additional information requested by Caltrans has been provided. A permit is written when the proposed encroachment is compatible with the primary uses and safety of the State highway system and the State's investment in the highway facility is protected. Inspection of the site by a district engineer sometimes is necessary to ensure that the proposed work is not detrimental to the State highway or the safety of highway users. The terms and conditions of encroachment permits are binding on the applicant.

An encroachment that involves work within the ROW with a cost of more than $1 million requires a highway improvement agreement or cooperative agreement in addition to an encroachment permit.

A proposed encroachment that requires permanent access to or maintenance within freeway or expressway ROWs is subject to special restrictions. Permits are seldom granted for these encroachments unless special circumstances require them. CALFED projects are unlikely to involve such encroachments.

CALTRANS INACTION WITHIN THE 60-DAY TIME LIMIT. If the district office fails to issue a permit or deny the application in writing within 60 days after the completed application is submitted, the applicant can legally begin work. In such cases, Caltrans will inspect and control the work as usual based upon the permit application; by signing an application, the applicant agrees to perform the work according to Caltrans' rules and regulations and subject to Caltrans' inspection and approval.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance must be completed before Caltrans may issue permits for major encroachments and approve some minor encroachments.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the Caltrans permitting process for CALFED actions.

- **Design the project to avoid areas under Caltrans jurisdiction.** An encroachment permit will not be required if the project is designed to avoid transportation facilities under State jurisdiction.

- **If encroachment in a State highway ROW is necessary, design the project to minimize encroachment.** Designing the project so that any encroachment will be temporary or minor will simplify the permit review and approval process. Examples of minimizing encroachment include tunneling or using a "jack and bore" method to minimize direct traffic conflicts.

- **Coordinate with the local Caltrans district during the planning and design phases of the project.** Early coordination between the project proponent and Caltrans will help Caltrans and the applicant identify compliance needs, commitments, and mitigation options and resolve issues before the permit is processed.

AIR DISTRICTS' AUTHORITY TO CONSTRUCT AND PERMIT TO OPERATE

OVERVIEW

The U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (ARB) have established standards for ambient air quality designed to protect public health and welfare. Federal and State standards exist for sulfur dioxide, nitrogen dioxide, ozone, particulate matter smaller than 10 microns in diameter (PM10), and carbon monoxide, among others. Air quality is regulated through air pollution control districts (APCDs) and air quality management districts (AQMDs) on a county and regional level. The air districts issue permits and monitor new and modified sources of air pollution to ensure that emissions from these sources will comply with national, State, and local emission limits and will not interfere with the attainment and maintenance of established standards for ambient air quality.

The ARB and individual air districts have established emission limits for specific types of stationary equipment to ensure that the ambient standards are achieved and maintained. APCDs and AQMDs issue two types of air quality permits: the preconstruction permit, called an authority to construct (ATC), and the permit to operate (PTO). In most cases, an ATC and a PTO are required for any new stationary source.

WHO NEEDS TO COMPLY?

For stationary sources, an ATC and a PTO must be obtained from the air district that has jurisdiction in the area where the source is located. Most air districts in California have fugitive dust rules that apply to construction activities. Although permits generally are not required, specific procedures must be followed to minimize the generation of construction-related dust. For CALFED actions, stationary-source emissions are most likely to come from internal combustion engines used to power pumps. Other emissions that could be generated by CALFED projects include PM10 emissions associated with construction activities.

WHO IS EXEMPT?

Each air district determines which emission sources and levels have an insignificant effect on air quality and are therefore exempt from permit requirements. Examples of activities that may be exempt from permitting requirements are:

- the use of combustion equipment that operates at less than 2 million British thermal units per hour, fired on natural gas or liquefied petroleum gas; or
- the use of stationary piston-type internal combustion engines with 50 brake-horsepower or less.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The amount of time needed for permit processing varies with many factors, including the type and complexity of the permit, the permitting authority, and the level of controversy associated with the project. Appeals filed after permits are issued will also affect processing time. Local regulations often specify the time frame for permit issuance; California law requires agencies to issue construction permits within 180 days. The amount of time needed to process PTOs depends on agency-specific time frames. Processing will normally take 1–2 months for the types of air permits that would be required for CALFED projects.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

Each air district uses its own application forms for permits. Applicants generally must provide the following for an ATC application:

- a description of any proposed business and industrial process, including:
  - the types of material to be used, the products manufactured, and the wastes generated;
  - the type of air pollution control equipment to be used, including design, size, or anticipated degree of control; and
  - the types of fuels to be used, their rates of use, and their sulfur and nitrogen content;
- a detailed description of the equipment to be used, including the size and type, for the entire unit or major part of each unit;
- identification numbers of existing air district permits, if any;
- operating schedules for emission sources by hours per day, days per week, and weeks per year, including preventive maintenance schedules; and
- a description of how the applicant intends to comply with the requirements of CEQA (typically, a final environmental impact report is needed before the air district considers an application to be complete).

WHAT IS THE FEE?

Each air district sets its own filing fees for the ATC application. For typical CALFED projects in major metropolitan areas, applicants would pay $100–$1,000. Air districts also charge annual PTO fees, which are generally greater than the filing fee and are based on the size of the project.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

Each air district has its own procedures for evaluating permit applications. Applicants should direct inquiries about the application process to the appropriate county or regional air district. In general, the following steps are required to obtain an ATC:

1. The local air district staff reviews the application to determine whether it is complete. The application may be returned to the applicant with a request for additional information.

2. When the air district accepts the application as complete, the staff evaluates it for conformance with applicable rules, including district, State, and national emission limitations.

3. The staff calculates the emissions from the new source or the increase in emissions that would result from modification of a source and determines whether those emissions would cause or contribute to violations of any State or federal ambient standards.

4. After completing the evaluation, the air pollution control officer (APCO) decides whether to approve, conditionally approve, or disapprove an ATC.

5. The APCO must consider all written comments and make a final decision within 180 days after accepting an application as complete. Denials may be appealed to the district's hearing board within 10 days of the denial notice. The hearing board conducts a public hearing and accepts testimony. The hearing board must reach a decision within 30 days after it receives the appeal unless the applicant and the air district agree to additional time.

An applicant may apply for a PTO only after obtaining an ATC from the air district and completing the construction or modification according to the terms of the ATC. Generally, the following steps are necessary to obtain a PTO:

1. The air district evaluates an application for a PTO to determine whether the applicant constructed the facility according to the conditions of the ATC.

2. The district conducts an inspection of the facility, or directs the applicant to have one conducted, to determine whether the facility meets the appropriate criteria.

3. If the facility is acceptable, the APCO issues the PTO. If the APCO denies the PTO, the applicant may appeal the decision to the hearing board within 10 days of the denial notice. The hearing board conducts a public hearing and accepts testimony. The hearing board must reach a decision within 30 days after it receives the appeal, unless the applicant and the air district agree to additional time.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

Typically, CEQA compliance must be completed before an air district issues an ATC. Generally, projects that require a PTO will have attained CEQA compliance; however, CEQA compliance is not required for a PTO to be issued.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following step is recommended to simplify and streamline the air quality permitting process for CALFED actions.

- **Coordinate early with the air district and the permitting engineer assigned to the project.** The applicant should contact the air district where a project would be implemented and discuss potential air emissions with the permitting engineer assigned to the project as early as possible. The permitting engineer can identify which air quality regulations would apply to the project and help determine the best approach to project design to minimize air quality impacts. Consultation with the air district may provide opportunities for redesigning the project to avoid the need for permitting.

LOCAL REGULATORY COMPLIANCE

OVERVIEW

California cities and counties have adopted local zoning or other ordinances and general plans that govern land development within their respective jurisdictions. Many development activities are subject to approvals and entitlements from cities or counties. Although most jurisdictions have similar requirements, each is likely to have its own unique regulations.

WHO NEEDS TO COMPLY?

The following CALFED actions may require city or county approval:

- actions that involve earthmoving activities, including those that involve changes to gravel mining practices;
- activities within local road rights-of-way (ROWs);
- building of a structure or significant modification or renovation of an existing structure; and
- construction inconsistent with local land-use designations.

WHAT ARE THE LOCAL PERMIT AND CONSULTATION PROCESSES?

The following is an overview of approvals or entitlements that may be required by local municipalities.

GRADING PERMITS. Grading permits are required for earthmoving activities. City or county public works departments require permits for cut-and-fill activities that exceed minimum thresholds set by local grading ordinances. Grading permits can be obtained from the public works department of the city or county where the project site is located.

Generally, the project proponent should provide grading plans that describe existing conditions and the proposed work. Cities or counties will most likely require a project proponent to submit information about the property's location, utility easements, topography, soils, existing structures, waterways, and other details. Some jurisdictions also may require the project proponent to submit environmental information on a questionnaire or checklist.

Grading plans are reviewed for compliance with local grading ordinances. Depending on the magnitude of the project and the adopted procedures of the jurisdiction where the project would occur, environmental review may be required before a permit is issued (see "National Environmental Policy Act and California Environmental Quality Act" earlier in this chapter).

Review of grading plans may also lead to other permit requirements. For example, some jurisdictions have tree ordinances that require permits for tree removal. If grading would result in the removal of trees of a protected size or species (e.g., native oaks), a tree permit may be required.

ENCROACHMENT PERMITS. Encroachment permits are required when an applicant proposes any construction activity within the ROW of a public road. An application should be submitted to the public works or roads department of the city or county where the activity is proposed.

BUILDING PERMITS. Building permits typically are required when a project applicant proposes to erect a structure or significantly modify or renovate an existing structure. An application should be submitted to the public works or building department of the city or county where the structure will be located. The project applicant will be required to provide multiple copies of building plans that show all aspects of the proposed construction.

SPECIAL-USE OR CONDITIONAL-USE PERMITS. Special-use or conditional-use permits often are required when a project applicant proposes a use for a property that is not a designated land use in the zoning for that property. Local zoning ordinances typically identify land uses that are permitted in specific land use zones and those that require a use permit. City or county planning agencies or community development agencies typically process applications for special-use and conditional-use permits. These permits are usually subject to consideration at a public hearing.

SUBDIVISION MAP APPROVAL. The State Subdivision Map Act provides the legal basis for local governments to regulate private land divisions in California for the purposes of sale, lease, or financing. Local plans and ordinances provide criteria for lot sizes, subdivision design, and required improvements. Applications for approval of subdivision maps are submitted to the city or county planning department or community development department for processing. A tentative subdivision map is subject to consideration by the planning commission at a public hearing in most jurisdictions.

SPECIFIC PLAN. A city, county, or upon approval, landowner or group of landowners may use a specific plan to plan development of an area. A specific plan includes a land-use scheme, development standards, and details on supporting infrastructure and public facilities financing. The plan can be prepared by the landowners, the city, or the county. Applications for specific plans must be submitted to the city or county planning department or the community development department for processing. A specific plan must be considered by the planning commission and the city council or board of supervisors at public hearings before it may be approved.

ZONING ORDINANCE AMENDMENT. A zoning ordinance amendment is typically required if the proposed use of land is not permitted conditionally or by right (i.e., without additional zoning permits) in the property's land use zone. Applications for a zoning ordinance amendment must be submitted to the city or county planning department or the community development department for processing. An application must be considered by the planning

commission and the city council or board of supervisors at public hearings before it may be approved.

SURFACE MINING AND RECLAMATION ACT. The Surface Mining and Reclamation Act of 1975, as amended (SMARA), provides to the California Department of Conservation (CDC) and the State Mining and Geology Board (SMGB) oversight responsibilities for surface mining activities. Counties have the authority to adopt ordinances, set guidelines and approve individual mining and reclamation activities. The SMGB can, under certain circumstances, assume authority to regulate mining in non-performing counties.

CALFED actions that could be subject to SMARA compliance include the reuse of dredged materials outside the areas from which they were taken, changes to gravel mining practices, and the purchase of mined materials, such as gravel. State agencies may only purchase gravel or other mined materials from suppliers who have met all SMARA requirements (known as the AB3098 list). This list is published quarterly in the State Contractors Register. Individual applicants would submit an application, including a reclamation plan, to the county for approval. Under most local ordinances, approval would be granted in the form of a conditional-use permit or special-use permit.

WILLIAMSON ACT (LAND CONSERVATION ACT OF 1965). The Williamson Act is a State law that allows local governments to contract with private landowners to restrict specific parcels of land to agricultural or related open-space use. In return, landowners receive lower than normal property tax assessments because they are based on farming and open-space value as opposed to full market land value. The State of California participates in the Williamson Act program by providing payments to counties to offset the property tax revenue reductions associated with the program. The California Department of Conservation (CDC) oversees the Williamson Act program at the State level.

Some CALFED actions related to habitat restoration could involve acquiring land under Williamson Act contracts (hereafter called contracted land) by federal, State, and local agencies. Williamson Act contracts are enforceable restrictions that go with the land. They are not similar to zoning or other planning tools, but actually encumber the sale and use of the parcels involved.

Government Acquisitions. For all acquisitions, the State's policy is to avoid locating public improvements on Williamson Act-contracted land whenever feasible. Restrictions on public agency acquisitions of agricultural preserve and contracted lands are in Government Code Sections 51290-51295, and apply to Federal, State and local acquisitions. Sections 51290-51294 deal with requirements for public land acquisitions. Section 51295 deals with the mechanics of the acquisition. Section 51295 applies to public land acquisitions done by eminent domain or in lieu of eminent domain only.

According to Government Code Section 51291(b), whenever a public agency plans to acquire land within an agricultural preserve for a public use, it must advise the director of the CDC and the local agency (e.g., city or county) administering the contract that it intends to acquire the land. Within 30 days of notification, the director of the CDC and the administering agency must provide the acquiring agency with comments regarding the proposed acquisition.

The CDC is also required to solicit comments from the Secretary for the Department of Food and Agriculture. The acquiring agency considers these comments before it acquires the contracted land. (The comments provided by the CDC director are intended to address issues related to agricultural land use, including the potential effects of the proposal on the conversion of adjacent agricultural lands.) After considering these comments, the acquiring agency may continue with its planned acquisition or acquire a different site.

Land acquisition or proposed public uses will not be invalidated if any public agency fails to comply with these reporting requirements; however, noncompliance by an agency other than a State agency can be used as evidence in litigation on acquiring contracted land or contracting public improvements on contracted lands.

Before acquisition, the agency must make findings that none of the conditions described in Government Code Section 51292 apply. These conditions state that no public agency shall locate a public improvement in an agricultural preserve based primarily on the lower costs of acquiring lands in the agricultural preserve. Additionally, no public agency shall acquire land under contract if there is other land where it is reasonably feasible to locate the public improvement. The following improvements are excluded from Section 51292 findings requirements:

- flood-control works, including channel rectification and alteration; and
- public works required for fish and wildlife enhancement and preservation.

While these types of projects are exempted from the findings requirements, other sections (e.g., Section 51290 and 51291) still apply. Also, while fish screens or other construction could be considered a public improvement exempt under Section 51293, purchasing land for future flooding or habitat-related purposes would probably not be considered a "public works" project under that section.

Public agencies that acquire land in an agricultural preserve also are required to notify the director of CDC within 10 days of the acquisition. If a public agency acquires Williamson Act land and later returns it to private ownership, the restrictions of the original Williamson Act contract still apply.

Before acquiring lands in agricultural preserves, consult early with the Department of Conservation's Division of Land Resource Protection. Staff can assist in identifying Williamson Act and agricultural preserve parcels, in providing Williamson Act maps, and in providing examples of successful public agency acquisitions.

DO THESE PROCESSES TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance is normally required for an applicant to receive city or county approvals or entitlements, including special use and conditional use permits, subdivision maps, specific plans, and proposed zoning amendments. CEQA compliance may also be required for

certain grading and building permits, depending on whether they are considered discretionary. It should be noted that CEQA Guidelines include removal of lands form the Williamson Act as an indicator of a significant environmental impact.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THESE PROCESSES?

The following steps are recommended to simplify and streamline local regulatory compliance processes for CALFED actions.

- **Consult early with local agencies.** To simplify local regulatory compliance, it may be appropriate to schedule early discussions with local municipalities (e.g., cities, counties, regional authorities) to ensure that CALFED actions are consistent with the goals and policies of existing general and specific plans, zoning ordinances, and building codes and that local permits or waivers are obtained as required.

- **Prepare comprehensive CEQA documentation.** CEQA documentation prepared for the CALFED project should address local permitting. Draft CEQA documents should be sent to the involved agencies during the review and consultation period. This can reduce or eliminate the need for subsequent CEQA documents.

COMPLIANCE WITH HAZARDOUS MATERIALS LAWS AND REGULATIONS

OVERVIEW

A variety of federal, State, and local laws and authorities regulate the use, disposal, and cleanup of hazardous materials and the reporting of hazardous material spills. The regulations and agencies most relevant to CALFED activities are described below.

- **Resource Conservation and Recovery Act of 1976 (RCRA).** The U.S. Environmental Protection Agency (EPA) administers the RCRA (PL 94-580), as well as the Hazardous and Solid Waste Amendments of 1984. This legislation provides the principal regulation for the generation, storage, transportation, and disposal of both solid (primarily nonhazardous) and hazardous waste. RCRA also regulates the installation, use, and removal of underground storage tanks. RCRA imposes reporting and permitting requirements and provides for operational control of those who generate, treat, store, transport, or dispose of hazardous waste. RCRA provides a general definition of the term "hazardous waste" and defines by regulation the specific materials that are considered hazardous waste under Subtitle C; the regulatory definition evolves as new information becomes available. In California, the California Environmental Protection Agency (CalEPA)—through the Department of Toxic Substances Control (DTSC) and the State Water Resources Control Board (SWRCB)—has assumed primary responsibility for the implementation of RCRA regulations.

- **Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and other statutory authorities.** CERCLA, also known as the Superfund Act of 1980 (PL 96-510), is also administered by the EPA. It is intended to protect the public and the environment from the effects of inactive and abandoned hazardous waste sites and new hazardous material spills, in contrast to RCRA, which is intended to address materials that are currently destined for disposal or recycling. CERCLA provides funds to compensate victims and to decontaminate the environment. The EPA Region 9 Superfund Division manages the Region's Superfund and emergency response programs for California, such as the cleanup of major hazardous waste sites, emergency response to oil and chemical spills, and oversight of cleanups at federal facilities (including military base closures). The statutory authorities for these programs include CERCLA, the Superfund Amendments and Reauthorization Act, the Occupational Health and Safety Act (OSHA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Oil Pollution Act of 1990.

- **Hazardous Waste Control Law (HWCL).** State hazardous waste regulations are primarily contained in the HWCL (California Code of Regulations, Title 22, Division 4, Environmental Health), administered by the DTSC. HWCL lists hundreds of hazardous and potentially hazardous chemicals; establishes criteria for identifying

hazardous materials; regulates the storage, transport, and disposal of hazardous wastes; and identifies hazardous wastes that cannot be disposed of on land.

- **Additional water quality regulations.** Water quality regulations developed from the Porter-Cologne Water Quality Control Act are designed to protect the quality of waters in California. Title 23 of the California Code of Regulations contains the water quality regulations pertinent to environmental contamination. See "Other State Water Resources Control Board and Regional Water Quality Control Board Permits and Authorizations" earlier in this chapter for information on SWRCB and RWQCB authorizations under these regulations.

- **Local ordinances.** California's Secretary for Environmental Protection has established a unified hazardous waste and hazardous materials management regulatory program (Unified Program) as required by statute (Health and Safety Code Chapter 6.11). The Unified Program consolidates, coordinates, and makes consistent portions of the following six existing programs:

  - hazardous waste generators and hazardous waste onsite treatment,
  - underground storage tanks,
  - hazardous material release response plans and inventories,
  - California accidental release prevention program,
  - aboveground storage tanks (spill control and countermeasure plan only),
  - uniform fire code, and
  - hazardous material management plans and inventories.

  A local certified unified program agency (CUPA) is required to consolidate, coordinate, and make consistent the administrative requirements, permits, fee structures, and inspection and enforcement activities for these six program elements within a county or city. Most CUPAs have been established as a function of a local environmental health or fire department.

- **Reporting of hazardous materials spills.** California Health and Safety Code Section 25507 requires the immediate reporting of any release or threatened release of hazardous materials. In addition, EPCRA and CERCLA require notification for all releases that equal or exceed federal reporting quantities. The California Governor's Office of Emergency Services (OES) coordinates overall State agency response to major disasters in support of local government, maintains a 24-hour toll-free toxic release hotline, and relays spill reports to several other State and federal response and regulatory agencies, as well as local governments.

Figure 23 illustrates the processes for addressing hazardous materials.

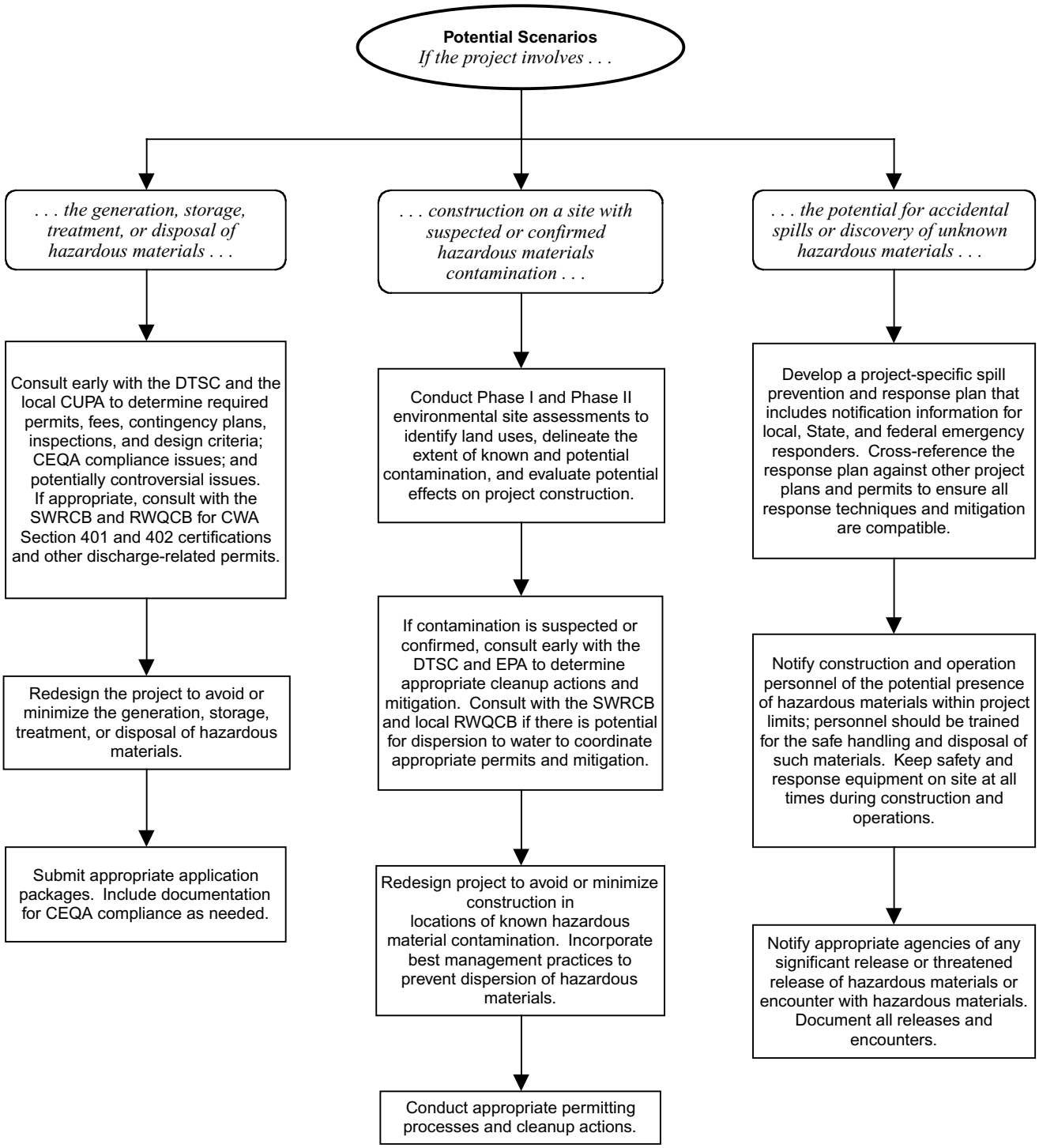


Figure 23
Hazardous Materials Scenarios

WHO NEEDS TO COMPLY?

Several types of CALFED actions could expose individuals and the environment to hazardous materials or wastes. These materials may be encountered during construction activities such as dredging, excavation, and dewatering required for storage, conveyance, and restoration projects. CALFED actions may encounter existing hazardous materials associated with:

- agricultural production activities (e.g., storage facilities and pits contaminated with fertilizers or pesticides, leaking or abandoned fuel underground storage tanks, abandoned pesticide storage containers, or agricultural field drainage ponds and pits);
- industrial and commercial sites (e.g., spills and leaks of petroleum hydrocarbons, polychlorinated biphenyls [PCBs], or industrial solvents from tanks and pipelines; metals and polycyclic aromatic hydrocarbons from railroad operations; or metals from inactive and abandoned mines);
- active and closed military bases (e.g., metals, PCBs, asbestos, and unexploded ordinances);
- closed landfills; and
- elements from naturally occurring geologic formations.

In addition, CALFED actions could affect public health and the environment if hazardous materials used during construction or operation activities are handled improperly. For example, hazardous materials (such as gasoline, oils, lubricants, and solvents that may be stored, used, or handled during construction) could be released in accidental spills. Also, CALFED actions related to wetland restoration and levee rehabilitation could result in the resuspension of contaminants (e.g., mercury-laden sediments) or the increase of methyl mercury released to the Bay-Delta ecosystem.

WHAT DOES THE EVALUATION AND APPLICATION PROCESS ENTAIL?

Evaluation and application processes vary widely for different types of hazardous material situations. The following are brief summaries of the measures that project proponents would probably need to take for some CALFED actions.

- **Existing hazardous materials present at the project site.** Either the applicant or a qualified contractor should conduct Phase I and Phase II environmental site assessments to:
  - identify current and historical land uses of the project area and neighboring land uses;

- delineate the extent of known and potential hazardous material contamination within and adjacent to the project limits; and

- evaluate potential impacts on project construction.

If hazardous material contamination is suspected or confirmed, the applicant should consult with the DTSC and the EPA to determine appropriate cleanup actions and mitigation. If the project is likely to result in the resuspension of contaminants or to increase the amount of methyl mercury released to the Bay-Delta ecosystem, the applicant should also consult with the SWRCB and the applicable regional water quality control board (RWQCB) to coordinate additional permits and determine appropriate mitigation measures.

- **Generation, storage, treatment, or disposal.** Any applicant that proposes a project that generates, stores, treats, or disposes of hazardous materials as described in the HWCL (Health and Safety Code, Division 20, Chapter 6.5) may need to obtain a permit to operate from the DTSC and/or comply with local CUPA requirements. An applicant should consult with both the DTSC and the local CUPA to determine appropriate permitting requirements and fees for the project. Several counties and cities within the CALFED program area have certified CUPAs; the applicant should contact the DTSC to determine whether the proposed project area falls within the jurisdiction of a certified CUPA. In addition, the applicant should consult with the SWRCB to coordinate any potential Clean Water Act Section 401 water quality certifications, National Pollutant Discharge Elimination System (NPDES) permits, or other SWRCB or RWQCB permits that may be required.

- **Accidental spills and discovery of unknown hazardous materials.** Government agencies must receive emergency notification of any significant release or threatened release of hazardous materials or encounter with hazardous materials, including oil. At a minimum, notification must be given to the local emergency response agency (911 or the local fire department), the local CUPA (if different from the local fire department), the OES Warning Center (1-800-852-7550), and, if appropriate, the California Highway Patrol. In addition, the National Response Center and other federal agencies may require notification. An applicant should contact OES before beginning construction to determine potential project-specific notification requirements. Notification requirements and contact telephone numbers should be included in a project-specific spill prevention and response plan.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance will probably be required for any CALFED action that requires a DTSC/CUPA permit or involves any discharge to a water body. Coordination with one or more local entities may also be necessary to meet local requirements.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the permitting process for CALFED actions and decrease the risk of hazardous material impacts on the public and the environment.

- **Design the project in such a way that construction will not take place where there is existing hazardous material contamination.** If possible, a project should be designed to avoid areas of known hazardous material contamination.

- **Avoid dispersion of existing hazardous materials.** Project construction activities in areas of known hazardous material contamination should take place during favorable weather conditions to prevent dispersion of known or potentially contaminated soils and sediments. Best management practices should be designed to prevent the dispersion of hazardous materials. It may be necessary to conduct core sampling and analysis of proposed excavation areas and to develop engineering solutions to avoid or prevent environmental exposure of toxic substances after excavation.

- **Design the project in such a way that the generation, storage, treatment, and disposal of hazardous materials are minimized or avoided.** For example, construction of aboveground and underground fuel storage tanks should be avoided for projects in urban areas where existing fuel sources are easily accessible. In addition, the project should be designed to minimize the generation of methyl mercury.

- **Train construction and operations personnel.** In accordance with federal, State, and local regulations, all construction and operations personnel should be informed of the potential presence of known and unknown hazardous materials within project limits and appropriately trained for the safe handling and disposal of such materials. Appropriate safety equipment should be available at all times during construction and operations activities.

- **Develop a spill prevention and response plan.** A written project-specific spill prevention and response plan should be developed and enacted to ensure proper management of hazardous materials used during project construction and operation and encountered unexpectedly during construction. The spill prevention and response plan should be cross-referenced against other project plans and permits (e.g., a stormwater pollution prevention plan may be required under NPDES) to make certain all response techniques and mitigation are compatible.

- **Coordinate early with DTSC and other resource agencies.** DTSC generally provides preapplication assistance consisting of application guidance, presubmittal meetings, and general technical assistance at no cost to the applicant. DTSC permit processing requires compliance with CEQA; if CEQA compliance has not already been completed, a CEQA initial study may be required. If additional resource agency permits or agreements are required for the proposed project, early consultation with the other resource agencies and the DTSC is helpful, especially if the additional permits also require CEQA compliance or if there are controversial issues.

CHAPTER 3. AGENCY CONTACTS

FEDERAL AGENCIES

NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802-4213
Telephone: 562/980-4000
Web address: http://swr.ucsd.edu

Sacramento Field Office
650 Capitol Mall, Suite 8-300
Sacramento, CA 95814-4706
Telephone: 916/930-3600

Santa Rosa Field Office
777 Sonoma Ave Room 325
Santa Rosa, CA 95404
Telephone: 707/575-6050

NATIONAL PARK SERVICE

Web address: www.nps.gov
Wild and Scenic Rivers information: www.nps.gov/rivers/wildriverscouncil.html

Pacific West Region
National Park Service
600 Harrison Street, Suite 600
San Francisco, CA 94107-1372
Telephone: 415/427-1304

Sequoia National Park and Kings Canyon National Park
47050 Generals Highway
Three Rivers, CA 93271

Yosemite National Park
Post Office Box 577
Yosemite National Park, CA 95389

NATURAL RESOURCES CONSERVATION SERVICE
West Regional Office
430 G St. Suite 4165
Davis, CA 95616
Telephone: 530/792-5700
Web address: www.nrcs.usda.gov

U.S. ARMY CORPS OF ENGINEERS
South Pacific Division
CESPD-ET-CR
630 Sansome Street
San Francisco, CA 94111-2206
Telephone: 415/977-8030
Web address: www.spd.usace.army.mil

District Offices:

Los Angeles District
Attention: CESPL-CO-R
911 Wilshire Boulevard
P.O. Box 2711
Los Angeles, CA 90053-2325
Telephone: 213/452-3425
Web address: www.spl.usace.army.mil

Sacramento District
Attention: CESPK-CO-R
1325 J Street
Sacramento, CA 95814-2922
Telephone: 916/557-5252
Web address: www.spk.usace.army.mil

San Francisco District
Attention: CESPN-CO-R
333 Market Street, 8th floor
San Francisco, CA 94105-2197
Telephone: 415/977-8460
Web address: www.spn.usace.army.mil

U.S. BUREAU OF LAND MANAGEMENT
California State Office
2800 Cottage Way, Suite W1834
Sacramento, CA 95825-1886
Telephone: 916/978-4400
Web address: www.ca.blm.gov/caso/index.html

Bakersfield District
3801 Pegasus Drive
Bakersfield, CA 93308

Ukiah District
555 Leslie Street
Ukiah, CA 95482

U.S. ENVIRONMENTAL PROTECTION AGENCY
Region 9
75 Hawthorne Street
San Francisco, CA 94105
Telephone: 415/744-1305
Web address: www.epa.gov/region09/index.html

U.S. FISH AND WILDLIFE SERVICE
Pacific Region
911 N.E. 11th Avenue
Portland, OR 97232-4181
Telephone: 503/231-6828
Web address: www.r1.fws.gov

California/Nevada Operations Office
Federal Building
2800 Cottage Way, Room W-2606
Sacramento, CA 95825-1846
Telephone: 916/414-6464

Fish and Wildlife Offices:

Carlsbad Fish and Wildlife Office
2730 Loker Avenue West
Carlsbad, CA 92008-6603
Telephone: 760/431-9440
Web address: http://carlsbad.fws.gov

Klamath Fish and Wildlife Office Stations
Federal Building
2800 Cottage Way, Room W-2606
Sacramento, CA 95825-1846
Telephone: 916/414-6464

North Central Valley Fisheries Resource Office
10950 Tyler Road
Red Bluff, CA 96080-7762
Telephone: 916/527-3043

Sacramento Fish and Wildlife Office
Federal Building

2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846
Telephone: 916/414-6600

Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003-7726
Telephone: 805/644-1766

U.S. FOREST SERVICE

Klamath National Forest
1312 Fairlane Road
Yreka, CA 96097

Los Padres National Forest
6144 Calle Real
Goleta, CA 93117

Mendocino National Forest
825 North Humboldt Avenue
Willows, CA 95988

Plumas National Forest
159 Lawrence Street
Box 11599
Quincy, CA 95971

Sequoia National Forest
900 West Grand Avenue
Porterville, CA 93257

Sierra National Forest
1130 O Street
Fresno, CA 93721

Six Rivers National Forest
1330 Bayshore Way
Eureka, CA 95501

Shasta-Trinity National Forest
2400 Washington Avenue
Redding, CA 96001

Stanislaus National Forest
19777 Greenley Road
Sonora, CA 95370

Tahoe National Forest

631 Coyote Street
Nevada City, CA 95950

STATE AGENCIES

CALIFORNIA AIR RESOURCES BOARD
1001 I Street, P.O. Box 2815
Sacramento, CA 95812
Telephone: 800/363-7664
Web address: www.arb.ca.gov

CALIFORNIA COASTAL COMMISSION
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Telephone: 415/904-5200
Web address: www.coastal.ca.gov/index.html

CALIFORNIA DEPARTMENT OF CONSERVATION
DIVISION OF LAND RESOURCE PROTECTION
801 K Street, MS 13-71
Sacramento, CA 95814
Telephone: 916/324-08559
Web address: www.consrv.ca.gov/dlrp

CALIFORNIA DEPARTMENT OF FISH AND GAME
Web address: www.dfg.ca.gov/dfghome.html

North California and North Coast (Region 1)
601 Locust Street
Redding, CA 96001
Telephone: 530/225-2300

Sacramento Valley and Central Sierra (Region 2)
1701 Nimbus Road. Suite A.
Rancho Cordova, CA 95670
Telephone: 916/358-2900

Central Coast (Region 3)
P.O. Box 47
Yountville, CA 94599
Telephone: 707/944-5500

San Joaquin Valley and Southern Sierra (Region 4)
1234 East Shaw Avenue
Fresno, CA 93710
Telephone: 559/243-4005 ext. 151

South Coast (Region 5)
4949 Viewridge Avenue
San Diego, CA 92123
Telephone: 858/467-4200

Eastern Sierra and Inland Deserts (Region 6)
4775 Bird Farm Road
Chino Hills, CA 91709 or
330 Golden Shore, Suite 250
Long Beach, CA 90802
Telephone: 909/597-9823

Marine Region (along entire coast)
4665 Lampson, Suite C
Los Alamitos, CA 90802
Telephone: 562/590/4873

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806
Telephone: 916/324-3110
Web address: www.dtsc.ca.gov

CALIFORNIA DEPARTMENT OF TRANSPORTATION
Headquarters
1120 N Street
P.O. Box 942873
Sacramento, CA 94273
Web address: www.dot.ca.gov

District 1
1656 Union Street (95501)
P.O. Box 3700
Eureka, CA 95502
Telephone: 707/445-6600

District 2
1657 Riverside Drive (96001)
P.O. Box 496073
Redding, CA 96049-6073
Telephone: 530/225-3013

District 3
703 B Street
P.O. Box 911
Marysville, CA 95901
Telephone: 530/741-4211

District 4
111 Grand Avenue
6th Floor
P.O. Box 23660
Oakland, CA 94623
Telephone: 510/286-4444

District 5
50 Higuera Street
San Luis Obispo, CA 93401-5415
Telephone: 805/549-3111

District 6
1352 West Olive St (93728)
P.O. Box 12616
Fresno, CA 93728
Telephone: 209/488-4020

District 7
120 South Spring St., Rm-112
Los Angeles, CA 90012
Telephone: 213/897-3656

District 8
464 W 4th Street
MS 619
San Bernardino, CA 92401-1400
Telephone: 909/383-4561

District 9
500 South Main Street
Bishop, CA 93514
Telephone: 760/872-0601

District 10
1976 East Charter Way
P.O. Box 2048
Stockton, CA 95201
Telephone: 209/948-7543

District 11
2829 Juan Street
P.O. Box 85406
San Diego, CA 92186-5406
Telephone: 619/688-6785

District 12
3347 Michelson Dr.
Suite 100
Irvine, CA 92612-1692
Telephone: 949/724-2000

CALIFORNIA DEPARTMENT OF WATER RESOURCES
Division of Safety of Dams
P.O. Box 942836
Sacramento, CA 94236-0001
Telephone: 916/445-1520
Web address: wwwdsod.water.ca.gov

GOVERNOR=S OFFICE OF EMERGENCY SERVICES
2800 Meadowview Rd.
Sacramento, CA 95832
Mailing address:
P.O. Box 419047
Rancho Cordova, CA 95741-9047
Telephone: 916/262-1843
Web address: www.oes.ca.gov

THE RECLAMATION BOARD
1416 Ninth Street, Room 1601
Sacramento, CA 95814
Telephone: 916/653-5434
Web address: wwwdwr.water.ca.gov/dir-organizations/ORG-Reclam_Board.html

REGIONAL WATER QUALITY CONTROL BOARDS
North Coast Region (1)
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Telephone: 707/576-2220
Web address: www.swrcb.ca.gov/rwqcb1

San Francisco Bay Region (2)
1515 Clay Street, Suite 1400
Oakland, CA 94612
Telephone: 510/622-2300
Web address: www.swrcb.ca.gov/rwqcb2

Central Coast Region (3)
81 Higuera Street, Suite 200
San Luis Obispo, CA 93401-5427
Telephone: 805/549-3147
Web address: www.swrcb.ca.gov/rwqcb3

Los Angeles Region (4)
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Telephone: 213/576-6600
Web address: www.swrcb.ca.gov/rwqcb4

Central Valley Region (5)
3443 Routier Road, Suite A
Sacramento, CA 95827-3098
Telephone: 916/255-3000
Web address: www.swrcb.ca.gov/rwqcb5

Fresno Office
3614 East Ashlan Avenue
Fresno, CA 93726
Telephone: 559/445-5116

Redding Office
415 Knollcrest Drive
Redding, CA 96002
Telephone: 530/224-4845

Lahontan Region (6)
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150
Telephone: 530/542-5400
Web address: www.swrcb.ca.gov/rwqcb6

Victorville Office
15428 Civic Drive, Suite 100
Victorville, CA 92392
Telephone: 760/241-6583

Colorado River Basin Region (7)
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Telephone: 760/346-7491
Web address: www.swrcb.ca.gov/rwqcb7

Santa Ana Region (8)
California Tower
3737 Main Street, Suite 500
Riverside, CA 92501-3339
Telephone: 909/782-4130
Web address: www.swrcb.ca.gov/rwqcb8

San Diego Region (9)
9771 Clairemont Mesa Boulevard, Suite A
San Diego, CA 92124
Telephone: 858/467-2952
Web address: www.swrcb.ca.gov/rwqcb9

THE RESOURCES AGENCY
Wild and Scenic Rivers Coordinator
1416 Ninth Street -Suite 1311
Sacramento, CA 95814
Telephone: 916/654-5656

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
50 California Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/352-3600
Web address: www.bcdc.ca.gov

STATE HISTORIC PRESERVATION OFFICER
California Department of Parks and Recreation
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001
Telephone: 916/653-6624
Web address: http://ohp.cal-parks.ca.gov

STATE LANDS COMMISSION
Division of Land Management
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825
Telephone: 916/574-1900
Web address: www.slc.ca.gov

STATE WATER RESOURCES CONTROL BOARD
Main information line: 916/341-5250

Division of Water Quality
1001 I Street
Sacramento, CA 95814
Telephone: 916/341-5455
Web address: www.swrcb.ca.gov

Division of Water Rights
1001 I Street
Sacramento, CA 95814
Telephone: 916/341-5300
Web address: www.waterrights.ca.gov

AIR DISTRICTS

Alameda County
(see Bay Area AQMD)

Amador County APCD
500 Argonaut Lane
Jackson, CA 95642-2310
Telephone: 209/223-6406
Web address: www.air-amador.org

Antelope Valley APCD
Web address: www.avapcd.ca.gov

Bay Area AQMD
939 Ellis Street
San Francisco, CA 94109
Telephone: 415/771-6000
Web address: www.baaqmd.gov

Butte County APCD
2525 Dominic Drive, Suite J
Chico, CA 95928
Telephone: 530/891-2882
Web address: www.bcaqmd.org

Calaveras County APCD
Government Center
891 Mountain Ranch Rd.
San Andreas, CA 95249-9709
Telephone: 209/754-6504
Email: lgrewal@co.calaveras.ca.us

Colusa County APCD
100 Sunrise Drive, Suite F
Colusa, CA 95932-3246
Telephone: 530/458-0595
Web address: www.colusanet.com/apcd/

Contra Costa County
(see Bay Area AQMD)

Del Norte, Humboldt and Trinity Counties
(see under North Coast Unified Air Quality)

El Dorado County
(Lake Tahoe and Mountain Counties Air Basins)
2850 Fairlane Court, Building C
Placerville, CA 95667-4197
Telephone: 530/621-6662
Web address: http://co.el-dorado.ca.us/emd/apcd/index.html

Feather River AQMD
Serving Yuba and Sutter Counties
938 14th Street, Marysville CA 95901-4149
Telephone: 530/634-7659
Web address: http://home.jps.net/fraqmd

Fresno County
(see San Joaquin Valley Unified APCD-Central)

Glenn County APCD
P.O. Box 351 (720 N. Colusa St.)
Willows, CA 95988-0351
Web address: www.arb.ca.gov/capcoa/roster.htm

Kern County APCD
2700 M Street, Suite 302
Bakersfield, CA 93301-2307
Telephone: 661/862-5250
Web address: www.kernair.org

Kings County APCD

(see San Joaquin Valley Unified APCD)

Los Angeles County
(see South Coast AQMD)

Madera County APCD
(see San Joaquin Valley Unified APCD-Central)

Marin County
(see Bay Area AQMD)

Mariposa County APCD
P.O. Box 5
Mariposa, CA 95338
Telephone: 209/966-2220
Email: air@yosemite.net

Mendocino County AQMD
306 E. Gobbi St.
Ukiah, CA 95482-5511
Telephone: 707/463-4354
Web address: www.co.mendocino.ca.us/aqmd
Email: mcaqmd@co.mendocino.ca.us

Merced County APCD
(see San Joaquin Valley Unified APCD-Northern)

Mojave Desert AQMD
(Northern portion of San Bernardino County, eastern portion of Riverside County)
14306 Park Avenue
Victorville, CA 92392-2310
Telephone: 760/245-1661
Web address: www.mdaqmd.ca.gov

Monterey Bay Unified APCD
24580 Silver Cloud Ct.
Monterey, CA 93940-6536
Telephone: 831/647-9411

Monterey County
(See Monterey Bay Unified APCD)

Napa County APCD
(see Bay Area AQMD)

Nevada County APCD
(see Northern Sierra AQMD)

North Coast Unified Air Quality
2300 Myrtle Avenue
Eureka, CA 95501
Web address: www.northcoast.com/~acuaqmd/

Northern Sierra AQMD
Web address: www.nccn.net/~nsaqmd/

Northern Sonoma County APCD
150 Matheson Street
Healdsburg, CA 95448-4908
Telephone: 707/433-5911

Orange County
(see South Coast AQMD)

Placer County APCD
DeWitt Center
11464 B Ave.
Auburn, CA 95603-2603
Telephone: 530/889-7130
Web address: www.placer.ca.gov/airpollution/airpolut.htm

Plumas County
(see Northern Sierra AQMD)

Riverside County
(see South Coast AQMD)

Sacramento Metro AQMD
777 12th Street, Third Floor
Sacramento, CA 95814-1908
Telephone: 916/874-4800
Web address: www.airquality.org

San Benito County
(see Monterey Bay Unified APCD)

San Bernardino County APCD
(see Mojave Desert APCD, see also
Antelope Valley Air Pollution Control District)

San Diego County APCD
9150 Chesapeake Dr.
San Diego, CA 92123-1096
Telephone: 858/694-3307
Web address: www.sdapcd.co.san-diego.ca.us

San Francisco County
(see Bay Area AQMD)

San Joaquin Valley APCD
1990 E. Gettysburg
Fresno, CA 93726
Telephone: 559/230-6000
Web address: www.valleyair.org

Bakersfield Office
2700 M Street, Ste.275
Bakersfield, CA 93301-2370
Telephone: 661/326-6900

Modesto Office
4230 Kiernan Ave., Ste.130
Modesto, CA 95356-9321
Telephone: 209/557-6400

San Mateo County
(see Bay Area AQMD)

San Luis Obispo County APCD
3433 Roberto Court
San Luis Obispo, CA 93401
Web address: oapcd.dst.ca.us

Santa Barbara County APCD
26 Castilian Dr. Suite B-23
Goleta, CA 93117-3027
Telephone: 805/961-8800
Web address: www.sbcapcd.org

Santa Clara County
(see Bay Area AQMD)

Santa Cruz County
(see Monterey Bay Unified APCD)

Shasta County AQMD
1855 Placer Street, Ste. 101
Redding, CA 96001-1759
Telephone: 530/225-5674
Web address: www.arb.ca.gov/capcoa/roster.htm
Email: scaqmd@snowcrest.net

Sierra County
(see Northern Sierra AQMD)

Siskiyou County APCD
525 So. Foothill Dr.
Yreka, CA 96097-3036
Telephone: 530/841-4029
Email: rakana@co.siskiyou.ca.us

Solano County
(see Yolo-Solano APCD)

Sonoma County
(see Northern Sonoma County or North Coast Unified AQMD)

South Coast AQMD
(South Coast Air Basin)
21865 East Copley Drive
Diamond Bar, CA 91765-4182
Telephone: 909/396-2000

Sutter County
(see Feather River AQMD)

Stanislaus County APCD
(see San Joaquin Valley Unified APCD)

Tehama County APCD
P.O. Box 38 (1750 Walnut St.)
Red Bluff, CA 96080-0038
Telephone: 530/527-3717
Web address: www.arb.ca.gov/capcoa/roster.htm

Tulare County APCD
(San Joaquin Valley Unified APCD)

Tuolumne County APCD
2 South Green Street
Sonora, CA 95370-4618
Telephone: 209/533-5693
Email: bsandman@co.tuolumne.ca.gov

Ventura County APCD
669 County Square Dr., 2nd Fl.
Ventura, CA 93003-5417
Telephone: 805/645-1400
Web address: www.vcapcd.org

Yolo-Solano AQMD
1947 Galileo Ct., Ste. 103
Davis, CA 95616-4882
Telephone: 530/757-3650
Web address: www.ysaqmd.org

OTHER

BUREAU OF INDIAN AFFAIRS
Western Region
One North First Street
P.O. Box 10
Phoenix, AZ 85001
Telephone: 602/379-6600
Web address: www.doi.gov/bureau-indian-affairs.html

CHAPTER 4. OTHER SOURCES OF INFORMATION

The following list includes documents that are referenced in this guide or that provide additional information on regulatory processes that users of the guide may find helpful.

PRINTED REFERENCES

Bass, R. E., A. I. Herson, and K. M. Bogdan. 1999. *CEQA Deskbook: A Step-by-Step Guide on How to Comply with the California Environmental Quality Act.* Second edition. Solano Press Books. Point Arena, CA.

_____. 2000. *The NEPA Book: A Step-by-Step Guide to the National Environmental Policy Act.* Solano Press Books. Point Arena, CA.

CALFED Bay-Delta Program. 2000. *Multi-Species Conservation Strategy*. July. Prepared by Jones & Stokes. Sacramento, CA.

California Department of Transportation. *Caltrans Encroachment Permit Manual*. California Department of Transportation, Central Publications Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815. Available for review at Caltrans District offices.

California Office of Permit Assistance. 1997. *California Permit Handbook.* California Trade and Commerce Agency. Sacramento, CA.

Curtin, D. 1999. *Curtin_s California Land Use and Planning Law.* Solano Press Books. Point Arena, CA.

Cylinder, P. D., K. M. Bogdan, E. M. Davis, and A. I. Herson. 1995. *Wetlands Regulation: A Complete Guide to Federal and California Programs.* Solano Press Books. Point Arena, CA.

ONLINE REFERENCES

STATE RESOURCES

California Trade and Commerce Agency	http://commerce.ca.gov
Office of Permit Assistance	http://commerce.ca.gov/permits/index.html
California Environmental Protection Agency	http://www.calepa.ca.gov
California Air Resources Board	http://www.arb.ca.gov
Department of Pesticide Regulation	http://www.cdpr.ca.gov
Department of Toxic Substance Control	http://www.dtsc.ca.gov
Integrated Waste Management Board	http://www.ciwmb.ca.gov
Office of Environmental Health Hazard Assessment	http://www.oehha.ca.gov
Water Resources Control Board	http://www.swrcb.ca.gov/
Business, Transportation, and Housing Agency	
Department of Transportation	http://www.dot.ca.gov
Resources Agency	http://agency.resource.ca.gov/
State Water Resources Control Board	http://www.swrcb.ca.gov/
Department of Fish and Game	http://spock.dfg.ca.gov/
Department of Water Resources	http://wwwdwr.water.ca.gov/
California Coastal Commission	http://agency.resource.ca.gov/coastalcomm/web/
California State Senate (legislative information)	http://www.sen.ca.gov/
State Library, Sacramento	http://library.ca.gov/california/State_Library/

FEDERAL RESOURCES

Environmental Library	http://www.envirolink.org/EnviroLink_Library
Federal Register	http://www.epa.gov/epahome/rules.html
Government Information Exchanges	http://ww.info.gov/
U.S. EPA	http://www.epa.gov/epahome/index.html
U.S. Army Corps of Engineers	http://www.usace.mil/

CHAPTER 5. GLOSSARY

Adjudication of a groundwater basin. A court's determination of the groundwater rights of the owners of land that lies atop a groundwater basin. In its determination, the court identifies the extractors and states how much groundwater each can extract.

Appropriative rights. Water rights held in the form of conditional permits or licenses from the State Water Resources Control Board (SWRCB), which allow the diversion of a specified amount of water from a source for reasonable and beneficial use during all or a portion of the year. The SWRCB's authorizations contain terms and conditions to protect prior water right holders, including Delta and upstream riparian water users, and to protect the public interest in fish and wildlife resources.

Conjunctive use. Operation of a groundwater basin in coordination with a surface water storage and conveyance system to maximize water supply reliability. Water is stored in the groundwater basin for later use by intentionally recharging the basin during years of above-normal water supply.

Federal nexus. Federal funding, implementation, or permit.

Fully protected species. Species listed in sections of the California Fish and Game Code for which the California Department of Fish and Game may not authorize take, except for scientific research.

Incidental take. Take of a listed animal or plant species that results from, but is not the purpose of, the carrying out of an otherwise lawful activity. Taking that is incidental to, and not intended as part of, a proposed action is not considered to be prohibited taking under the federal Endangered Species Act (FESA) or the California Endangered Species Act (CESA), provided that such taking is in compliance with the terms and conditions of an incidental take statement or incidental take permit, respectively.

Mud flats. Periodically inundated and exposed unvegetated areas such as tidal coastal areas and the edges of inland lakes, ponds, and rivers.

Navigable waters of the United States. Those waters that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, may be susceptible for use, or may be connected to bodies of water that may be used to transport interstate or foreign commerce. Despite the name, there is no requirement for vessels to be able to navigate these waters.

Nonpoint-source pollution. Pollution that does not come from a defined discrete source, such as a pipe, but which is spatially diffuse--such as urban runoff or agricultural runoff. Also referred to as polluted runoff.

Point source. A discrete conveyance such as a pipe or constructed ditch from which air or water pollutants may be discharged.

Point-source pollution. Wastes discharged from discrete sources such as pipes and outfalls.

Prime farmland. Land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops as determined by the Secretary of Agriculture pursuant to the Farmland Protection Policy Act of 1982. The land must also be available for these uses (cropland, pastureland, forestland, or other land, but not water or urban built-up land). Prime farmland has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed according to acceptable farming methods, including management of water.

Public trust. A sovereign public property right held by the state for the benefit of the people. The public trust doctrine holds that certain types of property are of high public value and private right of ownership of these properties should be limited. These "public trust properties" or "public trust lands" are held by the state as sovereign for the benefit of all citizens of the state. "Public trust values" are those attributes or uses recognized to be in the public interest; these include commerce, navigation, fisheries, recreation, and other public purposes. In issuing or reconsidering any rights to appropriate or divert water, the state must balance public trust needs with the needs of other beneficial uses of water.

Riffle and pool complexes. High-quality fish and wildlife habitat on steep gradient portions of rivers or streams where a rapid current flowing over a coarse substrate results in turbulence (riffles) and a slower moving current in deeper areas results in smooth flow (pools).

Riparian water rights. Entitlements to water that are held by owners of lands that border natural flows of water.

Sacramento and San Joaquin River Basins Comprehensive Study. U.S. Army Corps of Engineers (USACE) study developing a systemwide comprehensive flood-control management plan for the Central Valley to reduce flood damage and integrate ecosystem restoration.

Safe Harbor Agreement. Voluntary arrangement between the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS) and cooperating nonfederal landowners. The agreements provide for benefits to endangered and threatened species through agreed-upon management actions while giving the landowners assurances that no additional future regulatory restrictions will be imposed.

Sovereign lands. Lands under sovereign ownership of the State of California, consisting of the beds of (1) more than 120 rivers, streams and sloughs; (2) nearly 40 nontidal navigable lakes, such as Lake Tahoe and Clear Lake; (3) the tidal navigable bays and lagoons; and (4) the tide and submerged lands adjacent to the entire coast and offshore islands of the state from the mean high tide line to 3 nautical miles offshore.

Special aquatic sites. Particular kinds of waters of the United States that receive special attention by the USACE and U.S. Environmental Protection Agency under the Clean Water Act. These waters are geographic areas that possess unique ecological characteristics of productivity, habitat, wildlife protection, or other important ecological values. These areas are generally recognized as significantly influencing or positively contributing to the overall environmental health or vitality of the entire ecosystem of a region. Special aquatic sites adversely affected by a non-water-dependent project are subject to greater scrutiny than other waters. The six types of special aquatic sites are:

- wetlands;
- federal, state, or local sanctuaries and refuges for fish and wildlife resources;
- mud flats;
- vegetated shallows (permanently inundated sites with rooted, submerged vegetation);
- coral reefs; and
- riffle and pool complexes.

Special rule, or "4[d] rule". A determination issued by USFWS or NMFS pursuant to Section 4[d] of FESA describing protections for the threatened species and the circumstances under which take is allowed.

Stakeholders. Urban and agricultural water users, fishing interests, environmental organizations, businesses, landowners, and others with interests in the design, problem solving, and decision making processes of CALFED.

Statutory authority. Authority granted by legal statute.

Take. As defined by FESA, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct"; "harm" refers to acts that injure a listed species, including habitat modification. As defined by CESA, "take" includes hunting, pursuing, catching, capturing, or killing, or attempting such activity.

Ungranted tidelands and submerged lands. Lands not granted to a private party, city, or county. Early in its history, the California Legislature statutorily transferred tide and submerged lands in trust to cities and counties, which were then required to develop harbors to further state and national commerce. The major ports of Los Angeles, Long Beach, San Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka are all located on "granted lands"; many marinas, aquatic parks, fishing piers, and environmentally sensitive habitats are also located on granted lands. Tidelands and submerged lands that have not been so granted or transferred are referred to as "ungranted".

Unique farmland. Land other than prime farmland that is used for production of specific high-value food and fiber crops. Unique farmland has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or yields of specific crops.

Watermaster. Person or body appointed by a court to ensure that a surface water or groundwater basin is managed in accordance with the court's decree. Also refers to a position within an irrigation project that is responsible for the internal distribution of project water.

Waters of the state. Defined in the Porter-Cologne Water Quality Control Act as "any surface water or ground water, including saline waters, wholly or partially within the boundaries of the state".

Waters of the United States. A term used to describe areas that fall under federal jurisdiction under the Clean Water Act. Waters of the United States include, but are not limited to, navigable waters; tributaries of navigable waters; waters that are currently used, were used in the past, or may be used in the future in interstate or foreign commerce; interstate waters; intrastate lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds used by interstate travelers for recreation and other purposes, that are the source of fish or shellfish sold in interstate or foreign commerce, or that are utilized for industrial purposes by industries engaged in interstate commerce.